



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

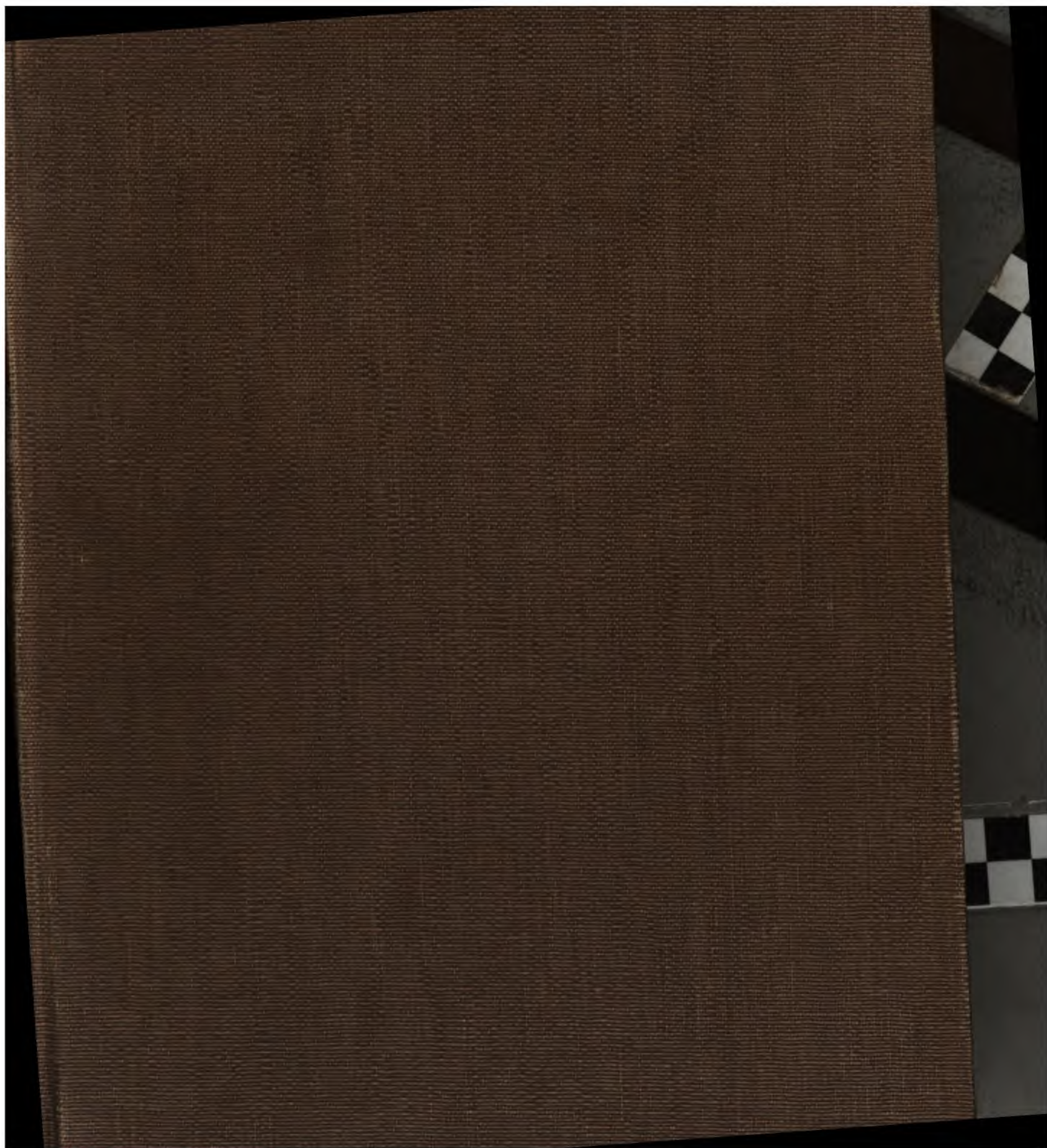
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



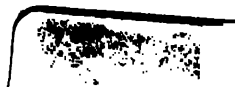
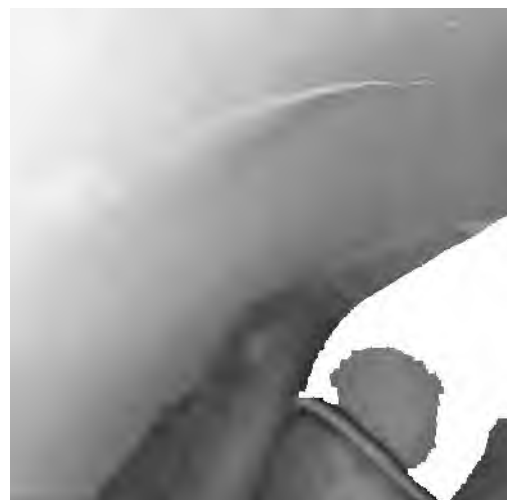
L. Eng. A75 d. 742

(= L.L.)

OW. U.K.

100

C 10.



REPORTS
OF
CASES
RELATIVE TO
THE DUTY AND OFFICE
OF A
JUSTICE of the PEACE,
FROM
Michaelmas Term 1776, inclusive,
TO
Michaelmas Term 1785, inclusive.

By THOMAS CALDECOTT, Esq.
OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

LONDON:
PRINTED BY A. STRAHAN,
LAW-PRINTER TO THE KING'S MOST EXCELLENT MAJESTY;
FOR R. PHENEY, INNER TEMPLE-LANE.

1800.



A

T A B L E

OF THE

N A M E S of the C A S E S.

B.	Page	E.	Page
R EX <i>v.</i> Inhabitants of St. Bartholomew by the Exchange	48	Rex <i>v.</i> Inhabitants of Ellisfield	4
— Inhabitants of Beeding otherwise Seal	90	— Evered and <i>al.</i>	26
— Inhabitants of Birmingham	77	F.	
— Inhabitants of Bampton	11	Rex <i>v.</i> Inhabitants of Fleet	33
— Inhabitants of Buckingham	64	— Flisler & Towill	135
— Butler and <i>al.</i>	93	— Inhabitants of Frampton upon Severne	97
C.		G.	
Rex <i>v.</i> Inhabitants of Corhampton	108	Rex <i>v.</i> Inhabitants St. Gile's Reading	54
D.		— Grunwell and Winship	72
Rex <i>v.</i> Justices of Devonshire	32	H.	
		Rex <i>v.</i> Hartley	
		— Inhabitants of Harwood	100
		— Inhabitants of Heckmond-wicke	103
		Rex	

NAMES OF THE CASES.

	Page	P.
Rex v. Inhabitants of Hedfor	51	
— Inhabitants of Hemlington	6	Rex v. Inhabitants of St. Paul Covent Garden Page 158
— Inhabitants of Hinxworth	42	
— Inhabitants of Hoddeston	23	R.
— Inhabitants of Hulland	118	Rex v. James Rodd - 147
I.		— Inhabitants of Ryton 39
Rex v. Inhabitants of St. John's Southwark -	62	S.
K.		Rex v. Inhabitants of Sandwich otherwise Swannage 105
Rex v. Inhabitants of Keel	144	— Inhabitants of Stockland 60
L.		— Inhabitants of Syderstone cum Bermer 19
Rex v. Inhabitants of Langham	126	T.
— Inhabitants of St. Lawrence Jewry -	18	Rex v. Inhabitants of Tamworth - 28
— Inhabitants of Leigh	59	— Towill and Flisher 135
M.		— Inhabitants of the Holy Trinity in Wareham 141
Rex v. Inhabitants of St. Mary Whitechapel -	24	U.
— Mathews -	1	Rex v. Inhabitants of Under Barrow and Bradley Field 65
— Inhabitants of St. Michael in Bath -	110	— Inhabitants of Uttoxeter 84
— Morgan -	156	W.
N.		Rex v. Inhabitants of Walfall 35
Rex v. Justices of Northampton	30	— Inhabitants of Welford 56
— Inhabitants of North Curry -	137	— Inhabitants of Westmeon 129
— Inhabitants of Northfield	115	— Inhabitants of Winchcombe - 94
— Inhabitants of North Shields -	68	— Winship and Grunwell 72
— Inhabitants of Nympsfield -	107	— Inhabitants of Wivelingham - 121
		H E A D S

H E A D S

O F

P R I N C I P A L M A T T E R S .

A.			D.		
A	Bandonment	Page 97, 144	Delegation		Page 30
	Absence	- 94	Detainer	-	129
	Administration	- 137	Discharge	- 11, 56,	129
	Agreement	- 32	Discontinuance	- 4, 65,	94
	Appeal	- 18, 42, 68,	Disjunctive	-	26
	Apprentice	- 31, 32, 60,	Dispensation	-	48
	Artificer	- 24			
	Assessment	- 108			
	Assignment	- 60, 126			
B.			E.		
	Bastard	- 6, 56	Estate	-	137
			Equitable Interest	- 110,	121
			Evidence	-	141
			Examination	-	18
			Exception	-	77
			Exemption	-	28
C.			F.		
	Certificate	- 64, 97, 144	Foreigner	-	18
	Commitment	- 26	Fraction of a day	- 4,	19
	Consent	- 30, 32	Fraud	-	110
	Counterpart	- 31			
	County Rate	- 158			
	Court Inferior	- 156			
	Custom of Country	- 77, 100			
			H.		

H.

HEADS of PRINCIPAL MATTERS.

H.		Parish	-	Page	28
Hearsay Evidence		Pass Warrant	-		18
Hiring		Paying	-		62
Hiring and Service		Personal Property	-		147
Hiring for less than a year		Presumption	-		156
Hiring New		R.			
I.		Rate	-	1, 24, 35, 62, 98, 103	
Imprisonment				105, 108, 147, 158	
Indenture		Relief	-		68
Inequality		Removal	-	39, 42, 64	
Infant		Representative	-		60
Inferior Courts		Retrospect	-	19, 23	
Inhabitaney		S.			
Insolvency		Servant	-	1, 11, 31, 56, 115	
Jurisdiction		Service	-	51, 94, 107	
Justices of Peace		Service and Hiring	-	4, 48, 100	
L.		Service connecting	-		54
Land Tax		Services two in one year	-		4
M.		Settlement	-		65
Maintenance		Settlement New	-		144
Mandamus		Sessions	-	68, 158	
Marriage		Stock in Trade	-		147
Master		T.			
N.		Tenants	-		156
New Hiring		U			
New Settlement		Usage	-		147
Notice		V.			
Nurture		Vagrant	-		18
O.		Voidable	-		26
Order		W.			
P.		Wife	-	39, 42	
Palaces Royal		Workhouse	-		68
					Hilary

A

T A B L E

O F T H E

N A M E S o f t h e C A S E S .

A.	Page	E.	Page
R E X v. Inhabitants of An-		Rex v. Inhabitants of Edifore	
dover -	373	otherwise Hedfor	371
Atkins et al', v. Davis et al'	315	— Inhabitants of Endon,	
		Longdon and Stanley	374
B.		F.	
Rex v. Inhabitants of Bagworth	179	Rex v. Franklyn	244
— Justices of Bedfordshire	167		
— Inhabitants of Great Book-		G.	
ham -	290	Rex v. Inhabitants of Grendon	
— Inhabitants of Little Bol-		Underwood —	359
ton	367		
C.		H.	
Rex v. Inhabitants of Chew		Rex v. Hartley - -	175
Magna	365	— Inhabitants of Hedfor, <i>ſic</i>	
— Compton et al.	246	— Edifore -	371
		A 2	Rex

NAMES OF THE CASES.

	<i>Page</i>		<i>Page</i>
Rex v. Inhabitants of Henfing-		Rex v. Inhabitants of St. Peter	
ham -	206	and St Paul, in Bath	213
— Hogg -	267	— Justices of Peterborough	238
— Inhabitants of Hope Man-		— Pickersgill et al' -	297
fell -	252	— Sir John Powell Price Bart.	305
— Horner et al' -	295		
— Justices of Huntingdon-		R.	
shire -	283	Rann, Clerk, v. Pickin et al'	196
I.		Robson v. Hyde Esq; et al.	310
Rex v. Inhabitants of St. James		S.	
Bury St. Edmunds	385		
— Inhabitants of Iveston	288	Rex v. Inhabitants of Seagrave	247
L.		— Stanley -	172
Rex v. Inhabitants of St. Law-		— Stevens -	302
rence Winchester	379	— Inhabitants of Swalcliffe	245
Ledwith v. Catchpole -	291	T.	
Rex v. Edward Pryse Lloyd,		Rex v. Inhabitants of Tarrant	
Esq; -	309	Launceston -	209
Lowndes, Esq; v. Lewis, Clerk	188	— Tottington Lower End	284
M.		U.	
Rex v. Inhabitants of Mitcham	276	Rex v. Inhabitants of Upton	
N.		Gray -	308
Rex v. Inhabitants of St. Ni-		W.	
cholas Gloucester -	262	Rex v. Peter Waldo, Esq;	358
P.		Wetherell Esq; v. Hall	230
Page Esquire, v. Howard	228	Rex v. White and Eling, Over-	
Rex v. Pedley -	218	feers, &c. -	183
		— Inhabitants of Winterfett	298
		— Inhabitants of Woodsford	236

HEADS

H E A D S

O F

PRINCIPAL MATTERS,

A.			B.		
		Page			Page
A Bandonment		284	Bail	- - -	295
Abatement	- -	298	Bastards	- - -	213
Ability	- - -	315	Bastardy	- - -	308
Absence	- - 284, 298,	359	Breaking Hedges	- - -	302
Acquiescence	- -	248			
Acts of Parliament	- -	266			
Actual Possession	- -	218			
Adjudication	- -	172			
Administration	- -	365			
Almshouse	- -	358			
Animus furandi	- -	295			
Appeal	- 172, 248,	283			
Apprenticeship	- -	367			
Arrest	- - -	291			
Arson	- -	218			
Affault	- - -	244			
Averment	- - -	175			

C.		
Cathedrals	- -	238
Certainty	- -	373
Certificate	- -	213, 252
Certiorari	- 172, 297,	309
Chapel	- -	310
Charity	- - -	358
Clergy	- -	188
Colleges	- -	238
Commencement	- 298, 359	
Commitment		

HEADS of PRINCIPAL MATTERS.

			Page				Page
Commitment	-	-	295	Filiation	—	—	308
Composition	-	-	196	Form	—	—	373
Consent	-	-	247	Fraud	—	247, 248,	295
Conspiracy	-	-	246				
Constable	-	-	252, 291		G.		
Contract	-	-	367				
County	-	-	302	Game	—	—	175, 188
County Election Act	-	-	374	Game Laws	—	—	230
Convertibility	-	-	367		H.		
Conviction	-	-	175, 302				
	D.						
Depositions	-	-	295	Hedges	—	—	302
Deputy	-	-	252	Highway Act	—	—	228
Description	-	-	373	Hiring constructive	—	—	206
Dispensation	-	-	359	Hiring new	—	179,	206
Dissolution	-	247, 298,	248	Hiring ejusdem generis	—	298,	359
Diverting Roads	-	-	228	Hiring and service	—	288, 298,	359,
Division	-	-	302			367	
Dogs keeping	-	-	175	Hiring weekly	—	—	179
Dogs using	-	-	175	Hue and Cry	—	—	315
	E.			Hundred	—	—	ib.
Election Act	-	-	374		I.		
Emancipation	-	-	284	Illness	—	—	298, 359
Equitable Estate	-	-	230	Incumbrances	—	—	230
Estate for life	-	-	188	Indictment	—	—	183, 246
Evidence	-	175, 206,	236	Information	—	—	246, 291
Examination	-	179,	308	Inhabitant	—	—	276, 315
Exception	-	-	359	Inns of Court	—	—	238
Excise	-	-	244	Intendment	—	—	308
Execution of	-	-	252	Intention	—	—	367
Extraparochial	-	167,	238	Judgment	—	—	308
	F.			Jurisdiction	—	—	183
Fact	-	-	374, 379	Justice of Peace	—	—	302
Felony	-	218,	291, 295		L.		

HEADS of PRINCIPAL MATTERS.

L.			P.		
		Page			Page
Labour, produce of	—	266	Personal Property	— 266,	315
Laches	—	206	Poor	—	310
Landlord	276, 365, 374, 379,	385	Preamble	—	213
Land-tax	— 276, 374, 379,	385	Presence	—	308
Lar eny	—	295	Presumption	— 252, 308,	371
Lease	—	209	Profits	— 262,	310
Legal Estate	—	230	Purchase	—	209
			Putative Father	—	308
M.			Q.		
Maintenance	—	298	Qualification	—	138, 230
Malum in se	—	218			
Mandamus	— 167,	238			
Manufactures	—	266			
Marriage	— 206, 236,	246			
Mechanical Instrument		266			
Militia	—	183			
Modus	—	196			
Mortgage	—	230			
N.			R.		
Next of kin.	—	365	Rate	196, 262, 266, 276, 310, 358,	
Notice	—	283		365, 374, 379, 385	
Nurture	—	284	Rateability	—	315
O.			Receipt	—	385
Occupation	—	358	Recital	—	183
Occupier	— 276,	365	Removal	—	283
Office	—	252	Representative	—	365
Officer of Excise	—	244	Rescue	—	244
Order	— 172, 308, 373		Residence	—	209
Order of Removal	— 179, 248		Return	—	297
Overseers	— 167, 183, 238		Riot Act	—	315
			S.		
			Seal	—	297
			Service	— 179, 247	
			Services connecting	— 206, 288	
			Service and hiring	—	288
			Service, last day	—	288
					Sessions

HEADS of PRINCIPAL MATTERS.

			<i>Page</i>						
Sessions	—	—	283					V.	
Settlement, maiden	206,	236,	371	Uncertainty	—	—			<i>Page</i>
Settlement prima facie	—		371	Usage	—	—			373
Sickness	—		298,						266
Smuggling	—	—	359					V.	
Stopping Roads		—	244						
Substitute	—		228						
Sum in gross	—		183	Vill	—	—			167, 238
Summons	—		183						
Surrender	—		179					W.	
Suspicion	—	—	209						
			291						
	T.			Wages	—		298,	359,	367
Tenant	276,	365,	374,	Waiver	—	—			298
Tythes	—	—	385	Weighing Machine					262
Tolls	—	—	196	Widow	—	—			236
			262	Wife	—	—	206,	371	
				Workhouses	—	—			213

A

T A B L E

OF THE

N A M E S of the C A S E S.

A.	<i>Page</i>	C.	<i>Page</i>
R EX v. Inhabitants of Alton	424	Rex. v. Coode et al', Church-	
— Inhabitants of St.		wardens and Overseers,	
Andrew Holborn	403	&c. of Penrhyn	- 464
— Inhabitants of Ashton-Un-		— Cottrell	- 551
derhill and Inhabitants			
of Charlton	- 416	E.	
— Inhabitants of Asley	- 559	Rex v. Inhabitants of Ealing	- 472
		— Inhabitants of East Ken-	
B.		nett	562
Rex v. Inhabitants of Birdham	500	— Inhabitants of Edmonton	435
— Inhabitants of Bradninch	461	— Edwards and another	- 513
— Inhabitants of Broadhem-		— Inhabitants of Ellsack	- 489
bury	- 498	— Inhabitants of Eyford	- 542
— Inhabitants of Bury	- 482	— Eyles Esq.	- 407
Part III		a.	Rex

NAMES OF THE CASES.

F.		N.	
	Page		Page
Rex v. Inhabitants of Fillongley	569	Newby v. Wiltshire	527
— Inhabitants of Findern	426	Rex v. Inhabitants of North	
		Batham	566
		— Inhabitants of North Bed-	
		burn	452
		— Inhabitants of North Cray	495
G.		S.	
Rex v. Green	391		
H.		Rex v. Saltren Esq.	444
Rex v. Inhabitants of Highnam	491	— Scofield	397
		— Inhabitants of Seaton and	
		Beer	440
		— Inhabitants of St. Sepulchre	547
		— Inhabitants of Sharrington	471
		— Sillis et al' Inhabitants of	
		Lakenham	522
		— Inhabitants of Stretton	487
J.		T.	
Rex v. James	458	Rex v. Inhabitants of Thames	
		Ditton	516
		— Inhabitants of Topcroft	478
		— Inhabitants of Towcester	497
L.		U.	
Rex v. Inhabitants of Long Wit-		Rex v. Utley	389
tenham	474		
— Lloyd et al'	415		
M.		W.	
Rex v. Inhabitants of Maghull	429	Rex v. Welch et al'	504
— Inhabitants of St. Mary		— Wetherill and Steed Over-	
Guildford	521	seers, &c.	432
— Inhabitants of St. Mary			
Lambeth	533		
— Inhabitants of Micklefield	507		
— Moorhouse	554		
— Mytton	536		

1777.

Hilary Term

17 Geo. 3. 1777.

Rex v. Mathews.

Saturday,
January 25.

TH E court of quarter sessions for the county of *Berks*, on appeal, confirm a rate, by which *Samuel Mathews* was assessed towards the relief of the poor of the parish of *Old Windsor* in that county, and state the following case :

That the appellant, *Samuel Mathews*, is rated for a keeper's lodge and two acres of land, situate in *Windsor Great Park*, in the said parish of old *Windsor*, and that the said great park with all the lodges belonging thereto, is the property of his Majesty ; and that by his letters patent, bearing date the eleventh day of *July* in the sixth year of his reign, his said Majesty gave and granted the office of ranger or keeper of his said park, with all the lands, grounds and soil within the same, lodges and privileges thereto belonging, to his brother, *Prince Henry Frederick*, or his assigns, during his Majesty's pleasure ; who by virtue of such office occupies the great lodge and park, and appoints the other keepers thereof ; and that the said *Mathews*, the appellant, is one of the keepers of the said park, appointed by his Royal Highness during pleasure ; and that the said appellant, by virtue of his office, occupies the said lodge, and the said two acres of land, for which he is so rated ; and that the lodges and park have not been rated to the relief of the poor, till about two years ago. That *John Johnson*, another keeper and occupier of one of the lodges in the said park,

The Royal Palaces are not rateable to the poor. Servants occupying separately house and land, whether they pay for them by rent or services, are rateable.

B

and

1777.

and within the said parish, having been rated about two years for his said lodge, and having refused to pay the rate, a warrant of distress was issued, bearing date the 27th day of *November* last past, and in consequence thereof, a distress was made, and his goods sold in the regular course of law, and the overplus returned to him; against which proceeding he has not appealed. And it further appearing that his Majesty is rated to the poor's rate, for the *Mews* in the parish of *New Windsor*; and that the same is paid by the Master of the Horse to his Majesty; and that his said Majesty is rated for the *Mews*, in the parish of *St. Martin*, in the city of *Westminster*; That *Richard Biggs*, who is clerk of the works at *New Windsor* and occupies a house there belonging to his Majesty by virtue of that office, has for many years been rated, and pays to the poor rate of *New Windsor* for the same; That the occupiers of a house in the parish of *New Windsor*, belonging to the crown, and at present in occupation of *Robert Blunt*, Esquire, have been rated, and have paid to the poor rate of the said parish for twenty years past; And that *Thomas Tilsley*, an officer under the crown at *New Windsor*, and occupier by virtue of his office, of a house on the *Castle Hill* belonging to the crown, and within the said parish of *New Windsor*, has for many years been rated and has paid for the said house to the poor rates; and that *Tilsley's* predecessor in the said office, was also rated and paid to the poor rates there for the said house; That the following officers or servants of the crown at *Hampton-court* in the parish of *Hampton*, in the county of *Middlesex*, who are occupiers by virtue of their respective offices, of houses and lands there belonging to the crown, have been regularly rated and have paid to the poor rates of the said parish of *Hampton*; particularly *Mrs. Mostyn*, wardrobe keeper at *Hampton-court* aforesaid, for a meadow belonging to her apartment in the royal palace and annexed thereto; *Mr. Rice*, clerk of the board of works, for the house he occupies there; *Mr. Shaw* and *Mr. Snape*, farriers to his Majesty, for the estates in their occupation; *Sir William Chambers*, comptroller of the board of works, for his house which he occupies by virtue of his office; That Lord *North* is rated for *Busby* park and lodge belonging to the crown, situated in the said parish of *Hampton*, which he occupies in right of his wife, who is ranger of the said park; and that the rates have been regularly paid for the same, both by him and by the late Lord *Halifax*, when ranger of the said park; and that General *Hodgson*, who is occupier of *New Lodge*, and certain land thereto annexed in.

in *Windsor Forest* in the parish of *Bray*, the said lodge and lands being the property of the crown, has been rated and paid to the poor rates of *Bray* parish, for the said lodge and lands; And it likewise further appearing, that many servants have gained their settlements in *Old Windsor* parish, by their service at the appellant's lodge, and the other lodges; many of whom with their families have been and are chargeable to the aforesaid parish of *Old Windsor*; and that the parish officers have lately paid 22*L.* and upwards on account of a pauper, who gained her settlement by service with Mr. *Fairfax*, the person who immediately preceded *Samuel Mathews*, the appellant, in the occupation of the lodge, for which the appellant is now rated; it is ordered, &c.

1777.

Dunning and *Douglas* shewed cause in support of the rate; and said, that, though the case was not intended to involve the question, whether lands in the actual occupation of the crown were rateable, yet it had found even *that*. But, be this as it might, the property of the crown in the occupation of a subject was clearly rateable; [a] and that at all events these underkeepers, who were masters of families, that subjected the parish to heavy burthens, not only ought in reason to contribute, but were also as occupiers clearly liable under *Stat. 43 Eliz. c. 2.* That this case is stronger than that of [b] *Chelsea Hospital* cited in [c]; *The King v. The Inhabitants of St. Luke's Hospital*; where the court stated, that the officers of *Chelsea Hospital* were charged, as having separate and distinct *apartments*, which are considered as their dwelling houses, and in which they and their families resided: and that the appellant and all other holders of these lands have always paid to the land-tax.

Wallace, *Bearcroft* and *Hunter H.* who had obtained the rule to quash this rate, on the ground that this lodge and close were *royal forest-land*, and as such exempt from the poor's rate, now deserted this ground; and *Wallace* contended that the appellant was not an occupier within the statute, the keepers being by their appointment merely servants during pleasure, and liable at a mo-

[a] Held, that where the site of a palace is demised to a subject for a certain permanent interest, the grantees, that occupy it, are rateable to the poor. *The Duke of Portland v. The parish officers of St. Margaret Westminster at Nisi Prius*, after *H. 33 G. 2.* *Wynne's Analysis of the law concerning the parochial provision for the poor.* 1767. p. 60.

[b] *Eyre v. Smalpace et al.* *E.* 23 G. 2. 1750.

[c] 2 *Burr. Rep.* fol. 1064. *M.* 1 G. 3. 1760. *Vide* also 1 *Black. Rep.* 249.

1777. ment's warning to be dismissed; that such persons could have no right or interest of their own, and could only be considered in the light of doorkeepers or porters at the lodge-gate of a nobleman's park; and that of course their master ought to have been rated.

Lord *Mansfield*. You shift your ground. The true question to be tried is, whether this property is rateable; and you chuse to argue, whether this man is the occupier. The royal palaces are not liable, neither have they ever been rated. As to the *Mews* in St. *Martin's* parish, that part of it only is rated, which was taken in of late years, and was before that time ground belonging to some adjacent parish. [a] But as to the point made before the court, it is clear, that when a servant occupies a house and two acres of land, whether he pays for them by a rent or by service, it can make no difference as to his being rated: he is equally liable.

Bearcroft now insisted, that the special case was contradictory; as it found, that the Duke, as ranger, was occupier of the *whole*, and also that the appellant, as keeper, was occupier of *part*; and therefore that the Duke, if the first finding prevailed in the opinion of the court, could only be rateable.

But this objection, as it went only to an amendment, was disregarded, and *Aston*, *Willes* and *Ashburst*, justices, concurring,

The rule was discharged, and the order of Sessions confirming the rate, affirmed.

[a] So in the case of *Catherine Hall, Cambridge*, which, though extraparochial, as most of the old Colleges are, was holden liable for lands newly taken in. *Rex v. Gardener*, Tr. 14 G. 3. 1774. *Corup.* 79.

N. B. In *Michaelmas* term last, the point of time at which this work professes to commence, no case arose applicable to any part of the subject of it.

Saturday
Feb. 8.

Rex v. Inhabitants of Ellisfield.

A Settlement may be gained under two hirings within the year, if the discontinuance does not exceed a day; of which the law will not make a fraction.

TWO Justices remove *Samuel Bulpit* and *Sarah* his wife, from the parish of *Popbam* in the county of *Hants*, to the parish of *Ellisfield* in the same county. The sessions, on appeal, confirm the order and state the following case:

That the pauper was hired on the 6th of *December*, 1773, to *John Dallman* of the parish of *Ellisfield*, to serve till the *Michaelmas*,

mas, 1774. That he went into the service the next day, and continued therein till 9 o'clock on said *Michaelmas* day; at which time his master paid him his wages, and the pauper took his clothes, and left his master's house and service. About half an hour afterwards, his master came to him in the said parish, and desired him to stay with him; but pauper desired a sum for his wages, which the master refused; saying, "He should see him presently at *Basingstoke* fair, held that day, for hiring servants." That at the fair, at one o'clock, he there made an agreement with the master to serve him till *Michaelmas* following, 1775, and went into his service that evening, being the evening of the said *Michaelmas* day 1774; and continued therein for three months. That pauper thought himself at liberty to hire himself to any other person as soon as he left his master's house; and should have hired himself to any person, who would have given him the wages he asked of his master.

1777.

Lawrence shewed cause in support of these orders; the service having been continued during every day of the whole year, the pauper must be considered as having served for a year within the meaning of *Stat. 3 W. & M. c. 11.* and *8 & 9 W. 3. c. 30.*; and he insisted upon the case of [a] *The King v. The Inhabitants of Fifehead Magdalen*, as in point.

Lord *Mansfield*, calling upon the other side; *Mansfield*, *Dunning* and *Kerby*, in support of the rule to quash the orders, contended, that this case differed from that of *Fifehead*; for that there the pauper had left part of his clothes (his shirt,) behind at his master's; and that the service might be well considered as continuing, while the pauper went home for that advice, which he received from his father. But that in this case the separation of the parties, though short indeed, was complete and perfect; that if, after an interruption of three hours, the relation between master and servant could be considered as continuing, there certainly could be no reason, as there was certainly no provision of any statute, to prevent its being holden as subsisting and uninterrupted at the end of three days. That, the dissolution of the contract being so complete without a pretence of fraud, no settlement could be gained under such a service; even if the court would connect two services, contrary to the true sense and spirit of the statutes

[a] *Burr. Settl. Cas. 116. M. 11 G. 2. 1737.*

1777- 3 *W. & M. c.* 11. and 8 & 9 *W. 3. c.* 30. and the repeated declarations of dissatisfaction from time to time by so many of the judges. [a]

Lord Mansfield—There is not the difference of an *iota* between this case and that of *Fifehead*; and every argument used there would apply in the present. It is said there, as here, that the pauper left his master's service, received his wages, and was absent some time. He might have hired himself with any other master during his absence. Upon his return he does not agree to continue the *old* service, but makes a *new contract* for more wages. There was therefore a compleat abandonment and discontinuance.

The ground, on which the court went in that case, and which holds equally in the present, was, that the law, will not make a fraction of a day: and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, *Chapple* justice observed very properly in the *Fifehead* case, that upon every new contract there is a *fort* of a discontinuance: and that the law of connecting two hirings within the year, which was now settled, could not have been supported, where the first period was suffered to elapse before the second contract was made, [b] if this were otherwise.

Aston, Willes, and Ashburst, Justices, concurring,

Rule discharged, and both orders affirmed.

[a] *Ld. Ch. J. Raymond* and *Page J.* in *The King v. The Inhabitants of Aynho*. *M. 1 G. 2. Foley*, 144. and *Powys, J.* as said by *Lee, Ch. J.* in the *Fifehead* case.

[b] And such are all the cases cited in *Burn*.

Vide Rex v. the Inhabitants of Under Barrow and *Bradley Field*, *H. 20 G. 3. 1780. Post.*

Rex v. Inhabitants of Hemlington.

Saturday
February 8.

TWO justices [c] made an order upon the township of *Darlington* in the county of *Durham*, to pay a weekly sum towards the maintenance of two bastard children under seven years of age, brought by their mother to the township of *Hemlington* in the

[c] This act does not require more than one justice. *Vide 3 W. c. 11. s. 11.* It is the *stat. 18 Eliz. c. 3.* which provides for the *punishment* of the mother and reputed father, as well as for the relief of the parish against them, that requires the authority of two magistrates.

county

county of *York*, the place of their mother's legal settlement; their own being at *Darlington*. The sessions, on appeal, discharge this order, and state a case to the following effect. 1777.

The case found, that *Eleanor Guy*, and *Mary* her daughter, a bastard, born at *Hemlington*, went, under a certificate from *Hemlington*, dated *July 11th, 1772*, to reside in *Darlington*; and that, during her residence under that certificate, *Eleanor* was delivered of *Ann* and *William*, two other bastard children.

That on the *11th of September 1775*, *Darlington*, by an order of two justices, removed *Eleanor* the mother and her daughter *Mary* to *Hemlington*; and that *Eleanor*, the mother, carried with her *Ann* and *William*, her two other children, though not named in the order of removal, as nurse children to *Darlington*.

The case then proceeded to state at large the facts contained in the following order of two justices.

Durham} WHEREAS *Jonathan Davison*, Esquire, one of
to wit. } his Majesty's justices of the peace for the
said county did, on the complaint of the churchwarden and overseer of the poor of *Hemlington*, in the county of *York*, issue a summons under his hand and seal, dated the *11th day of October* instant, and directed to the churchwardens and overseers of the poor of the township of *Darlington*, in the said county of *Durham*, thereby requiring them or some of them to appear before him and such other of his Majesty's justices of the peace for the said county of *Durham*, as should be at the townhouse in *Stockton*, in the same county, this day at eleven o'clock in the forenoon of this day, to shew cause why an order should not be then and there made, for the payment by the same churchwardens and overseers, of a weekly sum to the said churchwarden and overseer of *Hemlington*, for the maintenance of *Ann Guy* and *William Guy*, bastards, born in the said township of *Darlington*, and then resident in the said township of *Hemlington*, as nurse children with their mother *Eleanor Guy*. And whereas, the said summons was duly served on the said churchwardens and overseers of *Darlington*, or some of them, but they or any of them have not appeared in pursuance thereof: And whereas, the said *Eleanor Guy*, in and by her voluntary examination taken in writing and upon oath this day by and before *George Sutton*, Esquire, and *Ralph Ord*, Esquire, two of the said justices, hath declared that she was delivered of the said *Ann Guy* and *William Guy* in the said township of *Darlington*, who were both born bastards,

1777. bastards, and are now of the several ages following, to wit, the said *Ann Guy*, of the age of four years or thereabouts, and the said *William Guy*, of the age of one year and an half or thereabouts; that they are now chargeable to the township of *Hemlington* aforesaid, and that she is not willing to part with them until they respectively attain the age of seven years. Now in consideration thereof, and on the complaint of the said churchwarden and overseer of *Hemlington*, We do hereby order the said churchwardens and overseers of *Darlington*, or some of them to pay to the said churchwarden and overseer of *Hemlington*, the sum of two shillings weekly and every week, for and towards the support and maintenance of the said *Ann Guy* and *William Guy*, until they shall be ordered according to law to forbear the said allowance or otherwise. Given under our hands and seals at *Stockton* aforesaid, the 25th day of *October*, 1775.

Ralph Ord,
G. Sutton.

The Case then proceeded to state—

That the churchwardens and overseers of *Darlington* were duly served with the said order, but refused to obey the same; and thereupon appealed to this court, at this sessions, (*January 10, 1776*,) against the said order. And the counsel on both sides having waived all defects [a] (if any) in the form and manner of making the said order for maintenance, the following question only was submitted to the consideration and judgment of this court, viz.

Whether the churchwardens and overseers of the poor of the township of *Darlington* are obliged or compellable to pay to the

[a] It is somewhat singular that the want of jurisdiction in the court of quarter sessions, no appeal having by any statute been given in the case of relief of poor persons by an order of a justice of peace, should have passed unnoticed at the bar in this case as well as that of the King v. the Inhabitants of *North Shields*, H. 20 G. 3. : especially as this defect had not only been pointed out in *M. 11 G. 3. 1770*, by Mr. Chambers *arguendo* in the case of the King v. Winship and Grunwell, *quod vide* in the Notes *Post*; but also appeared by clear legal inference from the case of The King v. Carlisle, *M. 7 G. 3. Burn's Just. 3. 617. Ed. 1785.* in which, had an appeal lain, the order appealed from must have been conclusive upon the indictment for not obeying it. *Vide* The King v. the Inhabitants of *North Shields*, *Post*.

The same oversight also happened in the case of the King v. Woodsterton, *M. 6 G. 2. 2 Barnard. 207. 247.* This case is also reported in 1 *Seff. Cases* p. 199. under the name of The King v. The inhabitants of *Woolstanton*, county of *Stafford*. In both reports it is stated as the case of an *Appeal* to the court of quarter sessions; and, though neither of these reports are in much repute, yet as they concur, they may together be considered of sufficient authority to establish such a fact as this.

churchwarden

churchwarden and overseer of the poor of the township of *Hemlington*, any money or other thing for or towards the relief or maintenance of the said *Ann* and *William*, the bastard children of *Eleanor Guy*, whilst they remain with their mother as nurse children at, and are maintained at the expence of the township of *Hemlington*, she refusing to part with them so that they be removed to *Darlington*? 1777.

Davenport shewed cause in support of the order of sessions; and said, that the natural and legal right of a parent to take children under the age of nurture, wherever they might be settled, along with her wherever she might go, was unquestionable: that, as to the question before the court, which was, by what parish such children during such residence were to be maintained, the cases of [a] *Wangford* and *Brandon*, [b] the King v. the Inhabitants of *St. Giles's in the Fields*, and [c] *Shermanbury* v. *Bolney*, which would be considered as having established, that they must, during their residence with their mother in a parish not their own, be maintained at the expence of their own, were all determined, when the court had in view a very different inquiry; and not, as here, the *maintenance*, but the *settlement* of the pauper: that Dr. *Burn* [d] was decidedly of opinion that they ought to be maintained by their mother's parish; from which the law will not permit them to be removed: that if justices have assumed the power of apportioning expences between parishes in the case of bastard children, it is contrary to the spirit and intention of *Stat. 18 Eliz. c. 3.*; which gives them authority to charge the mother or reputed father *in relief of the parish*: that such a practice in all cases is contrary to law; and that the inconvenience of settling minute and disputable accounts for six or seven years together, between parishes at the two opposite extremities of the island, would be monstrous and intolerable; that there are only two or three cases, in which the power of apportioning is given to justices: 1. Where, from the inability of one parish it becomes necessary, in aid of their poor rate, to assess another. [e] 2. Where removals and appeals are in sessions adjudged vexatious and frivolous, [f] or where upon the removing of a certificated

[a] Carth. 449. F. 10 W. 3. 1 L. Raym. 395. Salk. 482.

[b] Burr. Sett. Cases 2. Tr. 6 and 7 G. 2. 1733.

[c] Carth. 279. Tr. 5 W. & M.

[d] Vol. 3. 315. Edit. 11th. And so in all parts of the earlier editions of his work, that touch this subject, Vol. 1. 206. Vol. 3. 305, 502. Edit. 11th.

[e] 43 Eliz. c. 2. sect. 3.

[f] 8 & 9 W. 3. c. 30. sect. 3. 9 G. 1. c. 7. sect. 9.

1777.

person the reasonable charges of the maintenance and removal are allowed by a magistrate. [a] That the present case was no one of these. That churchwardens and overseers are not authorized to relieve paupers not resident in their parishes; except in the case of certificated persons, [b] or such as are in the workhouse. [c] That, as the case of [d] *Skeffretb* and *Walsford* had settled, that the mother may retain her bastard children under seven years of age though settled in another parish, it would be much more expedient, that they should be maintained as casual poor in the parish, in which, if the mother chose, they must necessarily remain; and that this case warranted that doctrine, and the practice that had obtained under the opinion of Dr. Burn.

Wallace, in support of the rule to quash the order. All that the case says, is, that the mother shall not be separated from her children.

Lord Mansfield (stopping Mr. *Wallace*,—And, if more, it would be a single authority; whereas there are several against it, in which the point is settled. The King v. *Saxmundham*, [e] *Fort.* 307. cited in *Bott*, 254. is expressly in point; and the King v. the Inhabitants of *St. Giles's*, in *Burr.* recognizes the same doctrine.

Aston, Justice.—Whether the child be legitimate or not, does not at all vary the case. The principle is the same; and the authority in *Fortescue* says expressly, “So if a Bastard.”

Willes and *Ashburst*, justices, of the same opinion.

Rule absolute.
Order of sessions quashed, and
original order affirmed.

This point has again been decided in the case of *Simpson & al.* v. *Johnson & al.* M. 19 G. 3. 1779. *Dougl.* 7. The question, by whom a nurture child, settled in one parish and living with its mother in another, ought to be maintained, was before the court in Tr. 8 W. 3. in the case of the King v. the Inhabitants of *Luckington*. *Comb.* 380, 381.; but was left undecided.

[a] 3 G. 2. c. 29. sect. 9.

[b] 8 & 9 W. 3. c. 30. sect. 1.

[c] 9 G. c. 7. sect. 4.

[d] Sef. Caf. Vol. 2. 89. Burn. Vol. 3. 365. Edit. 1785. Dr. Burn states it as the case of a *bastard* child: a fact, which the case expressly states not to have been adjudged in the order.

[e] 12 W. 3.

Hilary Term 17 Geo. 3.

II

Rex v. Inhabitants of Brampton.

Tuesday
February 11.

TWO justices remove *Hannab Wright* from the parish of *Ashover* in the county of *Derby* to the parish of *Brampton* in the same county. The sessions, on appeal, confirm the order, and state the following case:

Maid servant
turned away
three weeks
before the
end of the
year for being
with child,
though her
whole wages
are paid,
gains no set-
tlement.

The pauper being legally settled at *Brampton*, hired herself to one Mr. *Longsdon* of *Eyam* for a year, and served under that hiring till within three weeks of the end of the year; when her master discovering her to be with child, turned her away, and paid her her year's wages, and half a crown over; whereupon she went home to her father's at *Ashover*, from whence she was removed as above stated. The pauper on her examination in court said, she was willing to have staid her year out, if she might; but that it was not material to her whether she staid or went, as she had received her whole year's wages; and that she was not half gone with child when she left her service; and hoped she could have done the work of her place to the end of the year.

Dunning and *Balguy* shewed cause in support of these orders.

Dunning. The question is, was this contract dissolved before the end of the year? This depends upon the fact, whether the master has acted either arbitrarily or fraudulently? For a master, upon just and reasonable cause, may discharge his servant; and there can be no doubt but that a criminal conduct, like the present, amounts to a reasonable cause. Though it has been said in [a] the *King v. the Inhabitants of Marlborough*, cited in *Viner's Abridgement*, Tit. Removal C. "That a maid-servant, got with child, can't be removed from her service." [b] This can only mean removed

[a] 12 Mod. 403. Tr. 12 W. 3.

[b] *Dunning* cited this case from Bott 266; adding from thence "This is however good cause to discharge her of her service; and, after her master has discharged her, she may then be removed, &c." This passage Mr. Bott cites from *Rex v. Marlborough*, Vin. Tit. Removal, 459; but the authority in Vin. which is cited from 12 Mod. 403. goes no farther than is stated above. There is indeed a marginal note in Vin. cited from *Shaw's Parish Law*, p. 241. "That in such case a justice upon complaint of the master may discharge her; but nothing is said in the page cited from Vin. or in 12 Mod. from which it can even be inferred, that there is any authority in a master so to discharge. The above citation from Shaw I find in p. 242. of his 3d edition 1736. Tit. Workhouses, c. 58. s. 22. It appears to be an observation of his own, I do not find it in his two last editions of 1755 and 1763. In the case of *Apprentices* Dr. *Burn* says expressly, that "the master may not of his own accord discharge his apprentice," but may proceed under one of two statutes, Vol. 1. p. 72. Edit. 1785.

1777. *by the parish officers before the contract is dissolved*; but this misconduct is a good reason for the master to dissolve it; and there can then be no objection to the removal by the parish officers.

Balguy. It has been said, that there ought to have been an application to a magistrate to discharge the servant: but, in the first place, this is not the case of a servant in husbandry, and therefore a justice of peace has no jurisdiction to discharge: or, if he had, it was in this case unnecessary, as the servant consented; and the interposition of a justice could be only necessary, in cases where the parties were not agreed. The payment of the whole year's wages has been also insisted upon; and that this payment could not have been made on any other idea, than that of the contract continuing to the end of the year: but it has again and again been determined that a deduction of wages does not prove the contract dissolved within the year: [a] *Aston* J. in the King v. the Inhabitants of *Westerleigh*; and, if so, the full payment of them cannot prove the contract continued: to this the case of [b] the King v. the Inhabitants of *Castlechurch*, and the King v. the Inhabitants of *Godalming*, H. 12 G. 1. cited in the above case, are fully in point. As to the fact found, "That the pauper hoped she *could* have done her work," it is not her ability, but her criminal conduct, that must be the test; or otherwise a master might be obliged to keep a woman in his house for many months under these circumstances, though he were a clergyman, or had a wife and daughters. The case of [c] the King v. the Inhabitants of *Richmond* is not applicable. It was the case of a marriage; and the master with good reason dispensed with a fortnight's service; for the pauper's wife had stayed a fortnight beyond her year at the instance and for the accommodation of the master.

Wallace and Wills, in support of the rule to quash the orders: The stat. 5 Eliz. c. 4. extends to maid servants; and therefore at least the intervention of a magistrate is necessary: without it, the contract could not legally be dissolved; nor is there any authority to support the contrary doctrine. But a magistrate could not in this case interfere, it not being the case of a servant in husbandry; neither

[a] His words were "The only difference between this case (*Westerleigh*) and the King v. the Inhabitants of *Goodneston* in Burr. Settl. Cal. 251. is the abatement of the wages; but there are several cases where that has been held to signify nothing," M. 14 G. 3. 1773,

[b] Burr. Settl. Cal. 68. Mich. 9 G. 2. 1735.


[c] East. 13 Geo. 3. 1773. Burr. Settl. Cal. 740.

is there even a *dictum* to support such a doctrine, except the marginal note in *Viner*, cited from *Sbarw*; and that is but a loose observation unsupported by any authority. That on the contrary the case itself in *Viner* was expressly in point; that there was no pretence for the construction suggested on the other side, that the court must mean "can't be removed till after the contract is dissolved by a discharge:" that the case affords nothing on which such a conjecture can be founded; but on the contrary says "*shall not for that be removed, but shall serve out her time: And since she is not removeable, &c.*" so as to leave no solid foundation to support the sense contended for. 'Tis argued, that because a deduction of wages does not vary the nature of the contract, the payment of them cannot vary it; but all the authorities say, that when the dismissal of a servant is accompanied, as here, with the payment of the whole wages, it shall be considered as a dispensation of the remaining service; or in other words a constructive continuance of it to the end of the year. They denied the consent of the pauper to dissolve the contract; and insisted that the half crown beyond her wages must be considered as an equivalent for her board: and that the only object of the master was to defeat the settlement of the servant in his parish.

1777.

Wills also cited the case of [a] the King v. the Inhabitants of *Hanbury*; where it was adjudged that, though the magistrate had allowed the discharge of the servant upon the complaint of the master, yet, because this was an act of jurisdiction in the magistrate, which ought to be by order, and it was stated that no order was made, the court held that the contract was not dissolved. And from hence, and from the circumstance of its being said by the court "I hat a servant cannot be thus discharged against his own consent," he inferred, that a master has not any such authority by law vested in himself. He also insisted, that an unmarried woman by being with-

[a] Burr. Settl. Cas. 322, 26 & 27 G. 2. 1753. In the same case reported in *Sayer* 100. under the name of the King v. the Inhabitants of *Tardeligg*, the judgment of the court is stated as express and positive upon this subject. It was the case of a servant discharged for marrying a woman big with child. And by the court. It is very doubtful, whether, as the power given to a justice of the peace by 5 Eliz. c. 4. par. 5. of discharging a servant, is only given for reasonable cause, marriage is a reasonable cause of discharge; but, if it be, as the justice of the peace made no order for the discharge of the pauper, the discharge by his master was illegal. And it appears from the report in *Burrow*, fo. 324, that this point was made at the bar; Mr. *Ingram* insisting, that marriage made the contract voidable at the election of the master, who might discharge for this cause.

1777.  child is not guilty of any crime, or even misdemeanour at common law: that all misdemeanours are indictable, which this is not. That though it may be an offence cognizable in the ecclesiastical courts, yet, after the woman is brought to bed, it is not so in the temporal courts, even by the provisions of any statute, unless the child becomes chargeable. That the pauper was willing to stay, and the whole wages were paid.

Lord *Mansfield*. The statute of 8 & 9 *W.* 3. c. 30, is an explanatory law, and must not be carried beyond the words by construction. [a] It declares that there must be a hiring for a year, and a continuance for a year in that service, to gain a settlement. With respect to the hiring, in conformity to the nature and object of the act, the court has been critical and exact; but service, from the nature of the thing, admits often of questions upon the circumstances; as whether the absence was with leave, from sickness, &c. But these questions have always been brought to this point, whether the contract was put an end to within the year? This cannot be done by the dismissal of the servant without good and sufficient cause. In [b] the King *v. Castlechurch* there was a discontinuance by agreement, and the contract therefore determined. In such case the payment of the full wages, which might be mere benevolence could make no difference. The question then is, Is this contract dissolved within the year? The answer depends upon this; Has the master done right or wrong in discharging his servant for this cause? I think he did not do wrong. The marginal note cited from *Viner*, whatever degree of authority it may be entitled to, is well warranted in principle. [c]. If the master agrees to the contract's

[a] *Vide* the words of Lord *Hardwicke*. Burr. Settl. Caf. fo. 69.

[b] Burr. Settl. Caf. 68. Mich. 9 Geo. 2. 1735.

[c] Whether the jurisdiction of justices of the peace extends to servants in general, or is confined to servants in husbandry, or whether masters in general may on reasonable cause, by their own authority, discharge their servants, does not seem to be fully and absolutely settled; both points at least were questioned in this case. All that seems established by this case is, that a master may, without the intervention of a magistrate, dismiss his servant for *moral turpitude*; even though it be not such, for which the servant may be prosecuted at common law. Whether he may or not for any other species of misconduct or general misbehaviour, though there are authorities to shew that he cannot, seems, as I have said, from this case, not to be fully and absolutely settled. By the general practice throughout the kingdom, and particularly in large towns, this power, however warranted, is exercised by masters. Certainly this question has not of late years been brought before the court for argument, except in the case in *Burrow* and *Sayer*. Tr. 27 G. 2. 1753; but at the Sittings at *Westminster* 1773, it arose before Lord *Mansfield*. A wet nurse, retained for the year, was discharged by her mistress, who tendered

contract's going on, the overseers, 'tis true, shall not take her away, because she is with child; but shall the master therefore be bound

1777.

tendered her her wages in proportion to the time she had served: this was refused, and the action brought for the whole year. It was proved on behalf of the defendant, that the plaintiff had been frequently insolent to her mistress, the defendant's wife; and was subject to violent fits of passion, in which she had several times frightened, and once awakened, her mistress, while sleeping, before her recovery. It was also proved that these fits of passion must be injurious to her milk; and it was insisted, that all these circumstances amounted to reasonable cause, and even created a necessity, of discharging the plaintiff. But *per Lord Mansfield*. "No person can be judge in his own cause; and this first principle could not be meant to be overturned by any law or usage whatsoever." And though it was stated as the general usage or practice in *London, Westminster*, and the environs, to dismiss servants with a month's wages, it was disregarded by the court, and the plaintiff had a verdict for the whole year. *Temple v. Prescott*, Esq.

But previous to the stat. of Eliz. this appears to have been the law; for under the authority of a case in 19 H. 6. cited in *Br. Abr. Tit. Laborers*, p. 27. it is expressly laid down by him, "That the master cannot discharge his servant within the time, &c. unless he agrees to it; no more than the servant can depart without the agreement of his master." And so *Dalton* in his *Justice*, *Tit. Labourers*, c. 58. p. 82. Edit. 1626. "The master cannot discharge his servant during his term, &c. without the agreement of his servant; and now by the stat. 5 Eliz. 4. it must be for some reasonable cause to be allowed, &c." And it is so laid down in the resolutions of the judges of assizes 1633. inserted in the later editions of *Dalton*, *Tit. Poor*, c. 73. p. 173. Edit. 1747. qu. 22. "Whether a justice of peace may discharge a servant, being with child, from her service; allowing that as a reasonable cause that she is thereby made unable to do the service, which otherwise she might have done; and if he may discharge her, whether that parish shall provide for her, till her delivery, if she cannot provide for herself; and so also, if her time be expired before her delivery, who shall provide for her after her time ended?"

Resol. (a) "If a woman, being with child, procure herself to be retained with a master who knoweth nothing thereof, this is a good cause to discharge her from her service. And if she be gotten with child during her service, it is all one. But the master in neither case shall turn away such a servant of his own authority. But if her term be ended, or she lawfully discharged, the master is not bound to provide for her; but it is a misfortune laid upon the parish, which they must bear, as in other cases of casual impotency."

By the reference to *reasonable cause* in the above question, it must, I conceive, have been in the case of a servant in husbandry; and to this description of servants alone, this statute has been holden to apply. *Mr. De Vall*, E. 28 Car. 2. *Sir T. Jones*, 47. 3 *Keb.* 626. 640. 642. *S. C.* *Re roft's Case* in the *King v. Gatey*, M. 7 W. 3. 5 *Mod.* 140. *K. v. London*, Tr. 3 Ann. 2 *Salk.* 442. and *K. v. Gregory*, ib. 484. *Dr. Burn* indeed in Vol. 3. p. 410. Edit. 1785, has said, generally and without any reference to the statute, that "if a maid servant shall happen to be with child, the master, if he pleases, may complain to a justice of the peace, that the servant is less able to perform the service; and the justice (if he sees cause) may discharge her." But he gives no reason or authority. And, I conceive, that till this or some

[a] The authority of these resolutions seems to have been brought in question principally by their having been intited upon as the opinion of all the judges. They appear from *Dalton's Justice*, *Tit. Poor*, c. 73. p. 231. Edit. 1727. to have been unquestionably the opinion of *Heath*, Ch. J. and from the case of the *K. v. Fairfax*, *Carth.* 94. *Comb.* 164. 1 *Show.* 76. and 3 *Mod.* 270, 271. *S. C.* the weight of evidence is in their favour, as having been recognised by all the judges, or at most with a single exception.

1777. bound to keep her in his house? To do so would be *contra bonos mores*; and in a family, where there are young persons, both scandalous

Some of the statutes have been considered as extending to every denomination of servants, such authority does not exist in the magistrate. That this statute is in this respect deficient, is stated by Dr. Burn himself, vol. 4. p. 161. and in the same page he inclines to think, that the general words in 20 G. 2. c. 19. *sect.* 1. "Servants in husbandry, who shall be hired for one year or longer, or artificers, &c. potters and other labourers employed for any certain time or in any other manner, &c." ought not to be universally extended; and seems to entertain little doubt but that the construction of the word "Labourers" ought to be restricted to labourers of the class and denomination before enumerated. If then this is to be taken as the true construction of the word "Labourers" in this act, I conceive that the words, "for any certain time or in any other manner," are merely opposed to the words in the preceding branch of the same section "for one year or longer;" and mean only to describe hirings either for some definite period less than a year, or conditional hirings and hirings for less than a year, under those loose indefinite engagements made under the custom of many of the particular trades enumerated in the act: neither is it easy to suggest, why the legislature should by particular acts interpose on behalf of agriculture and particular manufactures, if the same remedies were open to all descriptions of persons and in every occupation under the general law. At the same time it may be proper to add, that Dr. Burn in Vol. 1. p. 73. produces adjudications upon this very act with respect to apprentices, viz. The King v. Collinglourn, and another case therein cited, M. 12 G. Lord Raymond, 1410. 1 Str. 663. S. C. which he says, contrary to former resolutions, viz. The R. v. Gately, M. 7 W. 3. Carth. 366. 5 Mod. 138. S. C. and the Q. v. Farnese, Mich. 1713. Caf. of Settlement, No. 29, seems to extend the equity of the act to other trades not mentioned in the statute; but these cases appear upon principle to be irreconcilable with the adjudications upon this act with respect to servants; and seem hardly to consist with a subsequent stat. 20 G. 2. c. 19. *sect.* 3.; which gives a power to two justices to discharge such apprentices, upon whose binding no larger sum than 5*l.* was paid without taking any notice of this statute; which regulations, as Dr. Burn upon the same ground of reasoning in *Tit. Servants*, Vol. 4. p. 163. observes, "if this statute had been supposed to extend to them, would have been superfluous and impertinent."

It is also remarkable, that the very phrase and wording of the stat. 5 Eliz. c. 4. *sect.* 5. which if it were holden to extend to servants in general, and were to be read as some writers give it, would determine this point, is stated by different writers and different editors of the statutes in terms directly contradictory. By some editors of the statutes, as Kelle, Bill and the executrix of Newcome, King's printers, and the assigns of Richard and Edward Atkins, Esquires, in 1706, and Serjeant Hawkins, it is given thus: "No person, which shall retain any servant, shall put away his said servant, unless it be for some reasonable or sufficient cause or matter, or be allowed before one justice." This reading, if the true one, gives an authority to the master of servants in husbandry at least, to discharge them on sufficient cause; and in the case of the King v. the Inhabitants of Hantury, Burr. Settl. Caf. fo. 324. it is stated by Mr. Ingram *arguendo* and not contradicted, that the statute runs in the disjunctive: on the contrary by other editors, as Rastell, Pulton, Cay, Pickering, and Ruffhead, and by Mr. Dalton in his Justice, it is thus read: "unless for some reasonable, &c. cause to be allowed before one justice." This reading, in cases of husbandry at least, confines the power of discharging servants to the magistrate: and the general tenor of the act seems to support this reading: for *sect.* 8. which inflicts a penalty on the master, who puts away his servant, &c. follows in all the editions the reading adopted by the later editors; setting out in the very words of *sect.* 5. the necessity of an allowance by a magistrate to protect the master, and not referring at all to any other branch of that section, which had it run in the disjunctive, would have been necessary, and therefore would most probably have been done: and the next section of the statute, which inflicts penalties on the servants that depart from their service, &c. runs in the same manner. The circumstance also of the discharge of apprentices not being left under

dalous and dangerous. Where a servant's absence is said to be *purged* (which is an improper expression) by receiving him again, the receiving only explains and shews the nature of the absence; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, *i. e.* the dismissal of his servant under a criminal charge, shall never be done away by an implication arising from the payment of his whole wages.

1777.

Willes, Justice. This case differs from that of the King *v.* the Inhabitants of *Richmond*; nor is it like that of the King *v.* the Inhabitants of *Islip*, in *Stra.* 423. where the cause of the discharge of the servant by the master was not reasonable. Here, if the master had daughters, it would not be fit that he should keep such a servant; though I think he could not avail himself of the authority of a magistrate; the jurisdiction of the justices being [a] confined to cases in husbandry.

Asbhurst, J. of same opinion.

Aston, J. was absent.

Rule discharged, and both orders affirmed.

[a] *Vide R. v. the Inhabitants of Welford, Tr. 18 G. 3. 1778. Post.*

under this act to the discretion of the master, but to the judgment of the magistrate, strongly confirms the last reading. It was thought the more necessary to enlarge upon this point, as the same disagreement is to be found in the common books upon the subject; *Dr. Burn* having adopted the last reading, Vol. 4. p. 127. Edit. 1785; and *Mr. Bott* having followed the other reading in the disjunctive. Extracts of Statutes prefixed to his Decisions upon the Poor Laws, p. 11. Edit. 1773.

Easter Term

17 Geo. 3. 1777.

Friday,
April 18.

Rex v. Inhabitants of St. Lawrence Jewry, London.

An appeal does not generally lie by a parish against a vagrant pass. Whether it does in the case of a foreigner sent under a false examination, is undecided.

A SINGLE magistrate, the Lord Mayor of London, granted a warrant for passing *Elizabeth Sbillingford*, wife of *Richard Sbillingford*, and her three children, apprehended as vagrants in the parish of *St. Lawrence Jewry*, in the city of *London*, to the parish of *Edgeware* in the county of *Middlesex*. The sessions, on appeal, quash this warrant.

Dunning now moved to quash the order of sessions; and insisted that an appeal lay only against an order of removal under the hands and seals of two justices; and not against a pass warrant made by a single magistrate.

Wednesday,
April 23.

Howorth shewed cause in support of the order; and insisted, that there may be a case, in which such appeal would lie; as where a foreigner, taken in an act of vagrancy, should, upon a false examination, be removed to a parish to which there was no pretence that he belonged: that this parish might in such case appeal, and would be entitled to relief against the fraud: that therefore the words "persons aggrieved" in the 26th section of stat. 17 G. 2. c. 9. were meant to give an appeal to *parishes*, and not merely to the vagrant himself, according to the authority of the case of [a] the

[a] the King v. the Inhabitants of *Ringwould*. That the ground of the appeal does not here appear; [b] and that a person who has no settlement in *England* may be passed.

1777.

Aston, Justice. They appear here to us to be vagrants, and that the parish of *Edgeware*, to which they were passed, sent them back again. This the parish had no right to do, but by order of two justices, sect. 11.: and he cited the case of [c] the King v. the Inhabitants of *Upmerden*, where *Lee* Ch. J. says, that the pass is only intended to prevent the vagrancy. That if the examination is false, the vagrant may under sect. 4. be punished. If from thence, or otherwise, the parish, to which he is removed, can discover the place of his legal settlement, they may in regular course remove him by an order of two justices.

Aston and *Ashburst*, Justices. The case of the King v. *Ringwould*, in which it was decided, that an appeal will not lie to a vagrant pass, must govern this. But they said, they did not give any opinion how it might be, if a vagrant appealed against such a pass; or if the person, sent by such pass were a foreigner, as stated at the bar, and had gained no settlement in *England*.

Lord Mansfield and Willes J. were absent.

Rule absolute, and
Order of Sessions quashed.

[a] Tr. 16 G. 3. 1776. Burr. Settl. Caf. 840.

[b] The form of the return was: "And whereas the churchwardens, &c. exhibited their petition and appeal against the said order or pass-warrant, and the same came on this day to be heard, &c."

[c] E. 16 G. 2. 1743. Burr. Settl. Caf. fo. 219. Bott, fo. 224.

Rex v. Inhabitants of Syderstone cum Bermer.

Wednesday
April 30.

TWO justices remove *Charles Dawson* and *Elizabeth* his wife, from the parish of *Binbam* in the county of *Norfolk*, to the parish of *Syderstone cum Bermer* in the same county. The sessions, on appeal, confirm the order, and state the following case:

D 2

That

1777. That *Charles Dawson*, being legally hired, lived with Mr. *Edward Glover*, at *Syderstone* in *Norfolk*, as a servant in husbandry, from *Michaelmas* day, 1769, until *Michaelmas* day 1770. On *Old Michaelmas* day 1771, one *James Carrington*, of *Mileham* in *Norfolk*, farmer, came to the *Unicorn* in *Mileham*, and asked *Dawson*, if he would live with him, and upon what terms. *Dawson* asked eight guineas, which *Carrington* refused to give; but offered him six pounds, which *Dawson* refused to accept. Upon this they parted. On the next day (being the 11th of *October* 1771) between two or three o'clock in the afternoon, *Carrington* and *Dawson* were together at the *Royal Oak* in *Mileham*; when *Carrington* asked him, whether he would take the wages he had offered, which *Dawson* again refused. But, after some conversation, *Dawson* let himself to *Carrington*, as a servant in husbandry, until the *Michaelmas* following, for seven pounds wages; and *Dawson* entered *Carrington's* service on the evening of that day, being the eleventh of *October*, and stayed in his service until the tenth of *October* following, being *Michaelmas* day 1772. On that day, *Carrington* not having finished harvest, asked *Dawson* to stay and help him up with his harvest; and though he thought himself at liberty to go, *Dawson* did stay with said *Carrington* until the next day, being the eleventh of *October*, at noon; and after he had dined, asked said *Carrington* for his wages: whereupon *Carrington* paid him the said sum of seven pounds, and *Dawson* quitted his service, and did not ask or receive any recompence for his additional service. On Sunday the 8th day of *October* 1775, *Dawson* was in company, at *Wighton*, with one *Robert Sillis*, who was then employed as a labourer by Mr. *Rix*, a farmer at *Binham* in *Norfolk*. *Sillis* informed *Dawson*, that Mr. *Rix*, wanted a careful servant, and believed he could help him to the place. The pauper told *Sillis*, that he might learn his character of a person present (one *William Cook*) and *Sillis*, after making inquiry of *Cook* concerning his character, told *Dawson*; that if he would come to *Binham* on *Michaelmas* day, he would take care that he should have the place. *Dawson* according to his promise then made, went to *Binham* on *Michaelmas* day, being the tenth of *October* 1775, and enquired at *Sillis's* house, whether Mr. *Rix* was at home. *Sillis* told *Dawson*, that Mr. *Rix* was gone to *Norwich*, but had desired that he (*Dawson*) would stay till his return. *Dawson* accordingly staid at a public house at *Binham* that night, and went to see his father at *Walsingham* the next day; and returned to the public

Hiring from
the second
day of one
year until the
first of ano-
ther, and ser-
vice under it,
gives a settle-
ment.

public house at *Binham* that night. On the eleventh of *October* 1775, Mr. *Pigge* of *Waterden* sent for *Dawson* to hire him. *Dawson* sent word to Mr. *Pigge*, that he should wait for Mr. *Rix*'s place; but that if Mr. *Rix* and he did not agree, he would wait on Mr. *Pigge*. Mr. *Rix* returned home in the evening of the eleventh of *October*, and on the next morning, upon seeing *Dawson*, said to him; so, you have stopt till my return: and after some conversation about wages (*Dawson* at first asking nine guineas) he hired *Dawson* UNTIL the *Michaelmas* following for eight guineas; and *Dawson* told the said *Rix*, that he expected his service would expire at the *Michaelmas* then next; whereupon *Rix* said, with all my heart, so long as you have stopt, it makes no difference; as I have not often a servant who stays with me so short a time as a year. *Dawson* stayed in the service of said *Rix* at *Binham* until *Michaelmas* last, when he married. In the course of the examination, *Dawson* was asked whether *Sillis* was usually employed to hire servants for Mr. *Rix*; to which *Dawson* answered, he did not know he was.

Davenport shewed cause in support of these orders; and insisted, that, though there was a conversation on the tenth, between the pauper and his master, yet, as it was not brought to any point, as it did not produce a hiring, and as there was not at that time the slightest reference to any future treaty, the agreement entered into on the next day, the eleventh, could not possibly be connected with it; and consequently that the hiring on the eleventh, till *Old Michaelmas* day, which was on the tenth, could not amount to a hiring for a year. That the law did not allow of such a thing as a retrospective hiring: [a] that as refinements upon these points have produced infinity of questions and difficulties, the safest way is to adhere strictly to the words of the Act of Parliament: that the only instance in which the court have departed from this rule, was in the case of [b] the King v. the Inhabitants of *Navestock*; where, upon a similar hiring, the court were influenced by the general custom and usage of the country at a public statute fair; and, from a consideration that all servants in that part of the country must otherwise be deprived of their settlements, were induced

[a] *Vide* Rex v. the Inhabitants of *Lam*, Mich. 25 G. 2. 1751. Burr. Settl. Cas. 394.

[b] Mich. 13 G. 3. 1772. Burr. Settl. Cas. 719.

1777. [c] to decide, that it seemed to be no stretch to consider this as a hiring from Michaelmas to Michaelmas: but that here, where the transaction between the parties was private and at home, where no custom was stated, and of course no body or number of persons could be affected, the individual ought rather to take the consequences of his own ignorance or oversight, rather than a maxim, adopted for the purpose of preventing litigation, and now established, should be overturned.

Lord Mansfield, (without hearing the other side), To be sure there must be a hiring for a year; and this is one. Though he were hired on the afternoon of the eleventh, yet we shall say, that he was hired at twelve o'clock at night on the tenth: for it is settled, that the law will not allow a fraction of a day. He served till the tenth; that is a year. If a man is born on the tenth, he is of age on the ninth.

Aston and Willes, Justices, concurring.
Ashurst, J. was absent.

Rule absolute, and
both Orders quashed.

[c] It is true, that no other ground of the judgment appears in Sir James Burrow's Reports; but it was certainly argued, and the court also went, upon the ground of the hiring having been till Michaelmas: which they held to include that day. It is so stated by Mr. Bott in his report of this case, p. 386. "Lord Mansfield. The word till, may, or may not be exclusive, according to the subject matter. How shall we construe it here? The custom is very material to explain it. Aston J. How has this word been understood? Willes J. The custom in such a doubtful case as this must be called in aid." And in the King v. the Inhabitants of Harwood, Tr. 20 G. 3. 1780. Post. Buller, J. expressly says: "The question in the King v. the Inhabitants of Navesock was, whether, on a hiring, from the day after Michaelmas day till the next Michaelmas day, that day should be holden exclusive or inclusive? The custom is only material to explain the terms of a contract, when ambiguous." This last cited authority has fully settled, that a hiring can in no case be retrospective; and that the supposed exception to the universality of this maxim arose from a partial view of the grounds of the judgement of the court in the case of the King v. the Inhabitants of Navesock; that the true ground of that decision was, that the terms of the hiring imported a contract for that day on which the year expired: that that decision derives also a further support from the ground of the present case, which upon the principle that there can be no fraction of a day, establishes, that a hiring, from any part of the second day of one year to the first day of the next, by analogy to the rule of law in other cases, gives a settlement. But, where such a number of days intervene, as in the case of the King v. the Inhabitants of Harwood, as to prevent the principle of there being no fraction of a day, by analogy to the rule of law in other cases, from applying; or where such terms as will warrant a construction of intent between the parties, are wanting, in such case no custom of the country shall avail to controul the law and to give a retrospect.

Rex

Rex v. Inhabitants of Hoddesdon.

1777.
 Saturday,
 May 10.

TWO justices remove *Ann Hickley*, from the parish of *Chefbunt* in the county of *Herts*, to the hamlet of *Hoddesdon*, in the parish of *Broxbourn*, in the same county. The sessions, on appeal, confirm the order, and state the following case:

That the pauper, five or six days after *Michaelmas* day 1778, went to *Hoddesdon*, to enquire after a place at Mr. *Vears's*, but was told by his sister, she believed she should not keep a maid at all; on which the pauper went back to *Chefbunt*; but the carrier called on her the day following, and told her, she might come if Mr. *Vears* and she could agree. She then went back, and staid about three weeks or a month upon liking, without any terms being talked of; when her aunt came, and let her for a whole year, at the wages of four pounds, to commence from the day she first came to the service. The pauper staid till the day after *Michaelmas* day following, when her mistress paid her the whole year's wages; and she then quitted the service with her own and master's consent, and went back to *Chefbunt*. On her examination she declared, that till her aunt came to let her, no agreement of any sort was made, and she thought herself at liberty to go to any other place, if one had offered; for that she would not let herself till her aunt came; and she also declared, that it was the day after *New Michaelmas* day when she quitted the service. Pauper, on her cross examination said, that her master gave her warning, her mistress and she having had some words: but she told her, she should not go till her time was up; or, if she did, she should go without her wages, or serve her time in *Bridewell*: and that *Michaelmas* day was on a *Sunday*, or else she would then have paid her her wages, as she apprehended she would be obliged to pay them over again, if she paid her on a *Sunday*. The aunt confirmed the above facts; but declared, she did not know whether it was the day after *Old* or *New Michaelmas*, that the pauper came away. But, pauper, being called up again, said, it was *New Michaelmas* day, and that she could not recollect within a week, when her aunt came to let her.

Wallace was to have shewn cause in support of these orders, but acknowledged that, after the case of [a] the King v. the Inhabi-

[a] M. 25 G. 2. 1751. Burr. Settl. Cas. 304. And vide Rex v. the Inhabitants of Elmsfield, E. 17 G. 3. 1777. ante p. 4.

1777. tants of *Klam*, he could not maintain that a retrospective hiring was good.

Aston, J. To be sure you can't.

The court being of this opinion,

Rule absolute, and
both orders quashed.

Saturday
May 10.

Rex v. Inhabitants of St. Mary Whitechapel.

TWO justices remove *James Turner*, *Editha* his wife, and their child, from the parish of *Portsea* in the county of *Hants*, to the parish of *St. Mary Whitechapel* in the county of *Middlesex*. The sessions, on appeal, confirm the order, and state the following case :

Artificer in
his Majesty's
service, if he
is rated by
the parish to
the land-tax,
and pays,
gains a settle-
ment.

That pauper, having gained a settlement in the parish of *St. Mary Whitechapel*, was afterwards rated, assessed and paid, to the land-tax, in the parish of *Portsea*: That he resided in the parish of *Portsea* forty days and upwards at the time he was so rated and assessed, and at the time he so paid the said rate or assessment. That he was a labourer, but not an artificer in the dock yard at *Portsmouth*, in the parish of *Portsea*, at the time he was so rated, assessed, and paid to the land-tax; and during the whole time he resided in the said parish of *Portsea*. That all the officers in the said dock yard are rated to the land-tax.

Dunning shewed cause in support of these orders; and contended, that as by the stat. 3 W. & M. c. 11. sect. 4. "No artificer or workman employed in his Majesty's service shall have any settlement by delivery and publication of a notice, &c." and as under all the determinations, according to the opinion of *Dr. Burn*, [a] the being assessed and paying is no more than tantamount to notice, the substitute cannot have greater legal consequences than its principal; and that, as *actual* notice, by the express provision of the legislature, shall not give a settlement; it would be too much to say, that a *constructive* notice, derived of course only from the authority of the courts of law, should have greater effect. If this

a] Vol. 3. p. 480. Edit. 1785.

could

could be considered otherwise, that the precaution of the legislature in enacting this clause would be eluded; and either the parishes, in which the King's yards stood, must be ruined, or, by the removal of every shipwright in their parishes, to prevent this otherwise inevitable consequence, the navy of *England* must be lost. That, after the repeated decisions upon the subject, [a] he would not controvert, as otherwise he should have done, that being assessed to and paying the land-tax, would not have the same consequences as in the case of the poor rate; but that the only question here was, whether this labourer's contribution to the parish fund came within the provisions of the 4th section of the act?

1777.

Kerby in support of the rule to quash these orders. As the stat. W. & M. c. 11. was the first that created the necessity of giving notice, &c., and as that very stat. s. 6. declares, that persons charged with, and paying their share towards the public taxes shall have a settlement without notice, the previous clause respecting notice was, as to those that fell within the description in the 6th section, as completely annulled as if it never had been enacted. That the precaution used in the 6th section, was to prevent the persons enumerated from gaining settlements by their own act; but, if the parish chose, where no fraud or obtrusion was suggested, to take notice, in its public register, of such persons as inhabitants, the act could never mean to take away the claim of support by the parish from such persons as had contributed their share towards the parish levies, at the instance, and by the act of the parish. That the case of [b] the King *v.* the Inhabitants of *Oakbampton*, was the case of a tide waiter rated to the land tax: that a tide waiter is a workman employed in his Majesty's service in a port town; and consequently as much within the meaning of the 6th section, as the present case: but in that the court were clear that he had acquired a settlement, and that case must therefore govern this. That it was not doubted in the case of [c] the King *v.* the Inhabitants of *Friendsbury*, but that a rigger employed in the dock yard at *Sbeernefs* could gain a settlement, if he were properly rated.

Lord *Mansfield*. There is no repeal of the former (the 4th) clause of this statute intended by the latter, the 6th. They are

[a] Burn, Tit. Settlement by Rates, Vol. 3. 479, 80. Edit. 1785.

[b] E. 7 G. 2. 1734. Burr. Settl. Caf. 5.

[c] Bott, 326. Tr. 9 G. 3. 1769. Burr. Settl. Caf. 644.

1777. different modes, but perfectly consistent. This man is not within the first clause; for he gave no notice: but he is within the latter; for he is rated, and that by the act of the parish; and therefore he gains a settlement.

Aston, Justice. The only difference between the two clauses is this: that a man of this description in the public service, by giving notice, shall not acquire a settlement; but the parish, taking notice of him by assessing him, shall give him a settlement.

Willes, J. being of the same opinion.

Ashurst, J. was absent.

Rule absolute, and
both Orders quashed.

Trinity Term

17 Geo. 3. 1777.

Rex v. Evered & al.

Saturday,
June 7.

The indenture of an apprentice, even if voidable, as made during infancy, cannot be avoided,

when he is before a magistrate charged with misbehaviour under that indenture. Warrant of commitment, setting out the character in which the prisoner is committed in the disjunctive, is bad.

TWO justices committed *Robert Colleball*, an apprentice, to the Bridewell of the town of *Shepton Mallett*, in the county of *Somerset*, for running away from his master. He had been bound, when an infant, for six years by indenture; and being now of age, he ran away, alledging that he did

so with an intent to avoid the apprenticeship, made when he was an infant, and to his prejudice.

1777.

Heath, Serjeant, had moved for a rule to shew cause why he should not be discharged: and, to avoid delay and expence, it was agreed that the rule should be so taken, with liberty to the Serjeant to take all objections against the form of the commitment, as if it had been returned on a *Habeas Corpus*: and he now in support of it objected to the uncertainty of the commitment, which ran thus: "As an apprentice, or servant, for disobeying his indentures or articles:" and he insisted, that this being in the disjunctive could not be supported, because justices have not a power to commit servants generally, though they may commit servants of a particular description. That the binding here being only for six years, is contrary to the stat. 5 Eliz. c. 4. sect. 26. which requires it to be for seven years at the least; that by sect. 41. all indentures otherwise made are void; and that it would be strange if it were not so, as no one can exercise a trade without apprenticeship for seven years. That at common law, an infant could make no contract, but such as was voidable, though for his benefit; that upon this statute, Lord *Hardwicke* and the court, in the case of [a] the King v. the Inhabitants of St. Nicholas in Ipswich, had expressly adjudged, that such an indenture was voidable by the parties: that the apprentice had in the present case done every thing in his power to avoid the indenture, having left his master, and said, he would live no longer under his controul; and that it would be extremely hard, that he should be subjected to punishment, only for using that liberty and exercising those rights, that the law gave him.

Dunning and *Buller* insisted, against the rule, that the apprentice, who had submitted to the indenture as long as he derived any advantage from it, and till he had learnt his trade, should not be permitted to desert his service as soon as he became useful in it: that this construction of the contract would be injurious to the master; but that the contract at the time of its commencement, which was during infancy, the time at which almost all apprenticeships are entered into, was beneficial to the infant; and, being so, might legally be made, and therefore could not be abandoned. And they contended that, though the warrant ran in the disjunc-

[a] Barr. Sett. Cas. 91. M. 10 G. 2. 1736. 2 Str. 1066. S. C.

1777.

tive, yet as he now stated himself to be an apprentice, he was under that description liable.

Lord *Mansfield*. It has been adjudged, that an infant may bind himself for his own benefit: and it is settled in the case in *Str.*, that a binding for four years gives a settlement.

Aston, Justice. Supposing the indentures voidable, I cannot conceive that the apprentice's running away can avoid them. Had he served regularly, and during such service declared his intention to depart, it might have been different. Here he would make use of his offence in order to avoid the punishment that attends it; but it is too late to do it before a justice, when charged with a crime.

Wiles and *Ashburst*, Justices, being of the same opinion, on this ground the rule would have been discharged:

But, as upon a return to a *Habeas Corpus*, Lord *Mansfield* said, that the objection to the warrant of commitment, as running in the disjunctive, must undoubtedly have prevailed, the counsel for the prosecution consented to the prisoner's discharge.

Saturday,
June 14.

Rex v. Inhabitants of Tamworth.

TWO Justices remove *Thomas Goff* and *Elizabeth* his wife, and their child, from the hamlet of *Boleball* and *Glascoate*, in the parish of *Tamworth*, and in the county of *Warwick*, to the parish of *Tamworth*, in the counties of *Warwick* and *Stafford*. The sessions, on appeal, confirm the order, and state the following case:

A hamlet not having overseers of its own, and never before assessed, if stated to lie within a parish, and to pay church rates, is subjected to all parochial taxes.

That *Thomas Goff*, the pauper, was legally settled in the hamlet of *Boleball* and *Glascoate*; and that afterwards he was hired for a year, and served that year at *Sirescote*; which is a hamlet consisting of one house only, and between three and four hundred acres of land. That the said hamlet of *Sirescote* has never contributed towards the relief of the poor of the parish of *Tamworth* aforesaid; nor has ever been assessed thereto: but has always been assessed, and has always paid to the support of the parish church of *Tamworth* aforesaid: that no overseer or overseers of the poor hath or have ever been appointed for the said hamlet of *Sirescote*; and that the said hamlet lies without the limits and jurisdiction of the borough of *Tamworth*, but is within the said parish of *Tamworth*.

That

That the pauper, *Thomas Gaff*, the said *Elizabeth* his wife, and their said child, were under the said order of the said two justices, delivered to the churchwarden of the said parish of *Tamworth*; which parish not only lies partly in the county of *Warwick*, and partly in the county of *Stafford*; but is a part thereof within the limits and jurisdiction of the borough of *Tamworth*, and part thereof without the said limits and jurisdiction.

1777.

Wallace and *Green* shewed cause in support of these orders; and insisted, that, the circumstance of the hamlet never having contributed towards those burthens, which the law threw upon the whole parish, was perfectly immaterial; and that this place could never be considered as a vill, within the meaning of stat. 13 & 14 Car. 2. c. 12; there being here only one house and no overseers. In support of this proposition, they cited the case of [a] the King v. the Inhabitants of *Denham*; [b] the King v. the Inhabitants of the Manor of *Grafton*; and [c] the King v. *Showler* and *Atter*. That the present case, where there was only one house, was not so strong as the cases cited; in most of which there were two houses at least: and that this was clearly part of the parish of *Tamworth*, where there were proper officers.

Dunning and *Wheler*, in support of the rule to quash the orders, insisted that this was a distinct vill, independent of the parish of *Tamworth*; and to which no pauper could be sent, till it had officers duly appointed: that the objection in several of the cases cited was, that the places there mentioned, being extra-parochial, could not be considered as vills. [d] That the justices had stated this to be a hamlet, and adjudged that the pauper had therein gained a settlement. That a hamlet is a subdivision of a parish, that may be chargeable with its own poor, is apparent from the circumstance of *Boleball*, the place from whence this removal is made, being of that description: for this place, therefore, overseers ought to have been appointed, and the pauper then removed there, and not to the parish at large.

Mansfield, in support of the rights of the owner of the estate of *Sirefcote*, insisted, that there was by no means enough stated to shew

[a] E. 8 G. 2. 1735. Burr. Settl. Caf. 35. 2 Str. 1004.

[b] E. 10 G. 2. 1737. Burr. Settl. Caf. 101. 2 Str. 1071.

[c] Tr. 3 G. 3. 1763. 3 Burr. Rep. 1391. Also in 1 Blackst. 419.

[d] Rex v. Inhabitantes de *Rufford*, E. 8 G. 1. 1 Str. 512. And Rex v. the Inhabitants of *Walbeck* in *Nottinghamshire*, M. 14 G. 9. 2 Str. 1143.

that

1777. that *Sirefcote* was part of the parish of *Tamworth*: that, though now reduced to a single house, it might be a vill: that, though the ecclesiastical division of parishes existed before the poor laws, it could not reasonably be concluded from the payment to the church, that it was within the parish; because it had in no one instance contributed to the poor, which contribution is beyond all comparison the heavier burthen; and, if due from *Sirefcote*, would therefore have been demanded.

Lord *Mansfield*. There is no doubt at all. The place is averred to be within the parish, where the hiring and service were had and performed; and it is no township or vill within the stat. of Car. 2. where officers are appointed; and therefore the justices could not remove the pauper there. The state of places as to the number of houses may have been different in different cases; but here are no overseers, no separate œconomy. The adjudication is to *Sirefcote*, as part of the parish of *Tamworth*.

Aston, Justice. This place is neither extra-parochial or a vill. In the case cited of the Manor of *Grafton*, it was holden no vill; though it had been converted into five dwelling houses and farms and was occupied by five several tenants.

Willes and *Ashburnsh*, Justices, concurring,

Rule discharged, and
both Orders affirmed.

Vide Rex v. Inhabitants of *Eyford*, H. 25 G. 3. 1785. *Post*.

134 L.T. 552.
95 L.T. 116, 155.

Rex v. Justices of Northampton.

January 25.
The consent
of parties,
that the sessi-
ons shall de-
legate their
authority,
concludes
such parties,
and gives va-
lidity to all
acts of the
sessions, in
consequence
of such con-
sent.

WILLS had moved to quash an order of the court of quarter sessions for the county of *Northampton*, quashing a poor rate for the parish of *Eydon* in that county, upon the appeal of *Thomas Ivens*. It was moved upon the ground, that the rate had been by that court referred to three justices out of sessions.

Lord *Mansfield*. The justices at sessions referred the merits of this appeal to *A. B. and C.*, Justices acting for *Brackley* division, in the neighbourhood of which this parish lies, or any two of them; and afterwards adopted the opinion of these gentlemen, without exercising their own judgment: and, if they did this of their own accord,

cord, without the consent of the parties, it cannot be supported: they are not warranted to delegate their authority: but, if they acted with the consent of the parties, I think they have done very right; and we never suffer the party, who consented to the reference, by coming here to set it aside. And I think it sufficient, if the attornies consented and attended the reference.

1777.

The court directed it to be sent back to the sessions, that they might certify whether it was referred by consent; and now, upon the motion of *Dayrell*, the order of sessions was

Affirmed.

Rex v. Inhabitants of Fleet.

Saturday
June 19.

TWO justices remove *Ann Burkett* from the parish of *Whapload*, in the parts of *Holland Elloe*, within the county of *Lincoln*, to the parish of *Fleet*, in the same parts and county. The sessions, on appeal, confirm the order, and state the following case: That *Ann Burkett*, the pauper, was in *May* 1768, when an infant, bound out a parish apprentice, by the churchwardens and overseers of *Whapload* aforesaid, to *Thomas Pears* of the same place, till she should attain her age of twenty-one years, or day of marriage, pursuant to the statute. That it appeared to the court of sessions, that the original indenture was properly executed by all the parish officers, and allowed by two justices: the counterpart was also allowed by the same justices: but neither the said indenture or counterpart were executed by *Pears*, the master. That the master nevertheless accepted the indenture, and the pauper; who he considered as his apprentice (as stated hereafter) till the apprenticeship expired. That the pauper lived with her master, as his apprentice, for five years; when, on *May-day* 1773, with the express consent of her master, she let herself to live with *William Cockayne*, in the parish of *Fleet* aforesaid, for a year; and did live there a year under that hiring. That she afterwards hired herself, with the same consent, to one *Belton*, in the parish of *Sutton*, and lived there about half a year. That at *Michaelmas* 1774, she returned to live with her master, *Pears*, as his apprentice; and continued with him for six weeks; when, by the same express consent of her master, she hired herself at different times to several other places in different parishes, but did not live in any of them for a year,

If an apprentice is bound, it is not necessary to the validity of his indenture, that the master should sign a counterpart.

1777. year, and always received the wages from her different masters, and so ways accounted for the same to the said *Pears*. That the pauper attained her age of twenty one years on July 30th, 1776. That at that time, and for four months before, she had lived, with her master's consent, with *Thomas Briggs* of the parish of *Thorney*; where, being with child, she soon after left her place, and went to *Whapload* aforesaid; who removed her to *Fleet* aforesaid.

Mansfield, in support of these orders, contended, that by the stat. 8 & 9 W. 3. c. 30. sect. 5. the master is required to execute a counterpart of the indentures; and that, this requisition not being complied with, the girl obtained no settlement by the apprenticeship.

Lord *Mansfield*. There is no doubt. The binding was authorized by 43 Eliz. c. 2. sect. 5. long before the act requiring a counterpart. But, though the binding was valid, if the apprentice was received, it was doubtful till that statute was made, whether the persons, to whom such poor children were to be bound, were compellable to receive them. That statute was therefore made; and, it subjects the master, upon his refusal to receive the apprentice, to a penalty; but in no other respect confirms the power of binding, which was already fully established.

Aston, Justice. It has been so settled in the case of [a] the King v. the Inhabitants of *St. Peter's on the Hill*, in *Chester*.

Willes and *Ashturst*, Justices, concurring,

Rule Absolute, and
both Orders quashed.

[a] H. 14 G. 2. Bost, 154.

Rex. v. Justices of Devonshire.

Where master receives money of apprentice of full age to vacate his indentures, the relation is dissolved, though the indentures remain uncanceled. Court will not interfere where a referee has determined.

BULLER had moved for a *mandamus* to the Justices of the county of *Devon*, to hear an appeal to an order of removal of *John Crook*, *Elizabeth* his wife, and their four children, from the parish

of

of *Witberidge* to the parish of *Puddington*, both in the county of *Devon*. The justices at the sessions had refused to enter into it, as one sessions had intervened since the removal. 1777.

R. v. Jus-
TICES of DE-
VONSHIRE.

The facts as appeared upon the affidavits were, that the order of removal was dated *October 21, 1776*: in *November* the pauper was removed. Some time afterwards it was agreed between the two parishes, that the question should be decided by the opinion of *Heath*, Serjeant; provided such opinion were given on or before the 14th of *January*, the sessions beginning on the 15th. It was also agreed, that no other instructions should be given to the counsel, than the examination of the pauper, which was:

That he was born in the parish of *Witberidge*, and about the age of seven years was bound to *Richard Elworthy* of *Witberidge*, with whom he lived till twenty one; and then made an agreement with his master to give him one guinea to discharge him from his apprenticeship. That the said *Richard Elworthy* gave him a discharge under his own hand. That after different services he gained a settlement by hiring and service under *Robert Salter*, in the parish of *Puddington*, if he was so far discharged from his apprenticeship by the above stated transaction, as to be capable of gaining a settlement by hiring and service.

On the 10th of *January* the opinion was given; and was, "That if the indenture of apprenticeship remained in the master's hands uncanceled, the apprenticeship still continued; and the agreement was no dissolution thereof, but only a licence to the apprentice to serve where he pleased." On this day the officers of *Witberidge* told the officers of *Puddington*, that, as the opinion was not decisive, they must inquire of the master, what had become of the indenture. At the sessions on the 15th, no appeal to the order of removal was entered. At the *Easter* sessions following, the parish of *Puddington* appealed; but the justices refused to enter into it, as not being in time.

Buller having early in the term moved for the *mandamus* on the ground, that, under the agreement, the opinion in favour of the parish of *Puddington* was conclusive; and that the parish of *Puddington* had appealed in consequence of objections raised to this decision subsequent to the *Epiphany Sessions*; and therefore that the statutable limitation of appeal to the next sessions ought, during the time the parties were under terms of compromise, to be suspended; now, on the last day of the term, *Fanshawe* and *Milles* Wednesday June 18. Jer. shewed cause; and having fully satisfied the court upon the

F

fact,

1777.
R. v. Jus-
tices of De-
vonshire.

fact, of the appeal having been prevented in consequence of the objection not having been raised *previous to the Epiphany sessions*,

Lord Mansfield. As both parties had agreed that this question should be submitted to counsel, and that his opinion should conclude, [a] though the court does not quite agree with the counsel in point of law, they would not, had the opinion been positive, have granted the *mandamus*. Upon the point of law, I am of opinion, that if the indenture had not been destroyed, but remained in the master's hands, the apprentice would yet have gained a subsequent settlement in *Puddington*. The master received a guinea of his apprentice, then of full age, for the express purpose of vacating the indenture. Why, could the master, after this, have used the indenture against the apprentice? So far from it, that the apprentice might have brought an action against the master for it.

But the opinion of the counsel was hypothetical only, and upon a state of facts at the time not settled and submitted to him by the parties. The case therefore might be considered as open to the interposition of the court. But the merits of the case appearing to be clearly against the party applying, the court, to prevent further litigation and expence, refused the rule; and, on account of some misconduct with respect to the affidavits laid before the court by the prosecutors of the rule, directed that it should be discharged, with costs out of pocket.

Mandamus Denied.

[a] *Vide* Rex v. the Justices of Northampton, *ante* p. 30.

1777.

Michaelmas Term

18 Geo. 3. 1777.

Rex v. Inhabitants of Walsall.

Thursday,
November 23.

TWO justices remove *Joseph Dean*, *Hannah* his wife, and their five children, from the parish of *Ashley*, in the county of *Stafford*, to the borough of *Walsall* in the same county. The sessions, on appeal, confirm the order, and state the following case:

That *Joseph Dean*, the pauper, being legally settled at *Swinerton*, came to reside in the borough of *Walsall*, in the month of *February* 1774, in a tenement which he held by lease for the term of fourteen years, at the yearly rent of 4 *l.* 10 *s.* That he continued to reside therein till *Michaelmas* 1776; during all which time he constantly paid, in his own right, the poor rates for the same, which were charged in these words only: "Late *Lowbridge's* house 2 *l.* 6 *s.* — 1 *s.* 2 *d.*" That various other tenements within the said borough were charged in the same manner, after new inhabitants had come into them; who severally paid the same, in their own right. That the tenement now in question had been so charged from the time when *Lowbridge* left it, till the time when the pauper came to reside therein; during which period one *Ford* inhabited it. And that several untenanted houses were continued in the assessments under the like description, "late such an one's

If the form of the rate shews that the parish have notice of the person rated, he need not be rated by name.

1777.
R. v. INHA-
BITANTS OF
WALSALL.

"house;" that is, the late occupant; together with the sums assessed thereon, opposite to such description.

Kenyon shewed cause in support of these orders; and said, the question was, whether under this form of rating as well as paying, the pauper gained a settlement? There is no doubt, but that the pauper paid the assessment in his own right, and that it is an occupier's tax. The only question is, whether he was sufficiently rated? This depends upon stat. 3 W. & M. c. 11. sect. 6. The parish form the rate as they please. If they had entered no more than the landlord's name upon the rate, it might be well argued, that they did not choose to rate the tenant. But here they have rated the tenement; and as this is an occupier's tax, the construction is, that they meant to rate him, who ought to pay: and if he is not rated, certainly nobody is. That this point had frequently been determined under similar circumstances; as that a settlement was gained by a man thus rated: "*The occupier of Roscoe's tenement*," as cited in 2 Burr. Rep. 1062. [a]. He cited also [b] the King v. the Inhabitants of *Uffculme*; and the King v. the Inhabitants of *Painswick*, [c] in which last case the form of the rate was, "*Thomas Clifford or Tenant*;" and the pauper, *Isaac Moor-man*, was adjudged to gain a settlement: the words of *Denison, J.* were also much insisted upon; who hinted, "that rating the house only might, for aught that he saw to the contrary, be sufficient; for the parish could not but know who was the occupier."

Bearcroft, Dunning, and Gough, in support of the rule to quash these orders, contended, that the statute and all the cases, as well those cited as those which were not cited, required, that there should be some designation of the person meant to be charged; though it was not necessary that he should be expressly named, as "*the occupier of Roscoe's Tenement*." But that here he is neither named nor pointed at; nor is any thing assessed but the tenement: that several untenanted houses were rated in this manner, and therefore that this circumstance negatived the inference insisted upon on the other side; for the tenant, not having been marked out, could not have been compelled to pay; and there be-

[a] From 8 Mod. 38. K. v. Inhabitants of *Brickhill*, p. 7. G. 1. But in a note Sir James Burrow states, that it was *Hoscoe's* tenement; and that the case was the King v. the Inhabitants of *Brighton*, p. 8 G. 1. 1723.

[b] Tr. 30 & 31 G. 2. 1757. Burr. Settl. Cas. 430.

[c] Tr. 31 G. 2. 1758. Burr. Settl. Cas. 465.

ing no other description even of his tenement than that which was used in the case of several others that were untenanted, the inference must be, that in the judgment of the parish this tenement must have been under the same circumstances with those amongst which it was classed; and, being in their consideration untenanted, such rating could not be in any view recognising him as an inhabitant, or be an equivalent for notice. That such a substitution was necessary to give a settlement, where there was no actual notice; the chief object of the act of Parliament being to secure notice of the person to the parish. Mr. *Dunning* added, that he expected to have heard of the case of *St. Mary le-More v. Heavytree*, as it had missed the justices; and, according to the state of it in [a] Dr. *Burn*, as taken from [b] 2 *Salk.* 478. was directly in point against him. But that that case was misreported, he proved from a copy, which he read, of the roll; in which it appeared expressly, that the pauper was rated: and said, that the court of quarter sessions had decided, that no settlement was gained there, because the tenement rented was under ten pounds a year. So that, though the adjudication was rightly stated, the report had mistated the ground on which the adjudication went.

Assn. Justice. I have no doubt. It is agreed, that the person must both be rated and pay. Then as to the manner how he is to be rated; it is clear, that his name need not be inserted in the rate. If the parish have sufficient notice of him, it is enough: Paying under a rating is equivalent to notice, and the officers have received the rate of this man for two or three years. As to the objection, that no payment could have been compelled upon this rate, that is perfectly immaterial; for the settlement does not go upon that; but upon its being due notice to the parish: and he has fulfilled the two conditions required by the act. As to the case in *Salk.* It is fully shewn by Mr. *Dunning*, that this was not the ground of the judgement, though it might be thrown out by the court. "Late *Lowbridge's*" is here as strong as "the occupier of *Hyscoe's*;" for it is stated, that he paid *in his own right*, and that I considered as making it a charge on the man. And even "*Clifford or Tenant*" has been holden sufficient to give a settlement; though surely a very vague way of rating, and which leaves

1777.
R. v. INHABITANTS of
WALSALL.

[a] Vol. 3. 475. Edit. 1785.
[b] H. 8 W. 3.

1777.
R. v. INHA-
BITANTS OF
WALSALL.

it quite at large, who might be the tenant: but the officers going and receiving the rate of the tenant fixes it, explains what was doubtful upon the entry, and shews notice: and *Denison*, Justice, in that case said, "The court ought not to be *over nice* and critical "in requiring a scrupulous strictness as to the form and terms of "rating persons." The rate, where it was "*Bowden's*", the man's name being *Bowden*, (a) might not perhaps be sufficient to justify a distress: but that is not the question. The question is singly, whether the parish officers have taken notice of a man as an inhabitant? And, when they take his money, they must know him. In this case many other tenements, that were uninhabited at the time, were so rated, and the new tenants paid the rate; so that it appears, that this was the understanding of the borough: and the pauper has actually done, and the parish knew that he had done, what it appears they meant he should do.

Willes and *Ashburst*, Justices, concurring,
Lord *Mansfield* was absent.

Rule discharged, and both
orders affirmed.

[a] R. 4 G. 3. 1764. *King v. the Inhabitants of Openbarrow*. Burr. Sett. Cas. 522.

1778.

Hilary Term

18 Geo. 3. 1778.

Rex v. Inhabitants of Ryton.

Saturday
January 31.

TWO justices remove *Sarah Kidson*, and her child, from the township of *Winlaton* in the county of *Durham*, to the township of *Ryton* in the same county. The sessions on appeal, confirm the order, and state the following case:

That upon hearing the appeal of the churchwardens and overseers of the poor of the township of *Ryton* against a certain order of removal, &c. in the words following: *Durham* (to wit.) To the churchwardens, &c. Upon the complaint of, &c. of *Winlaton*, unto us, &c. that *Sarah Kidson*, the wife of *Benjamin Kidson*, a soldier in his Majesty's regiment of foot called the *Young Buffs*, now in *America*, and *Hannah* their daughter, aged about twenty three weeks, have come to inhabit in the said township of *Winlaton*, &c. &c. We do adjudge that the lawful settlement of them, the said *Sarah Kidson*, and her said child, is in the township of *Ryton*. We do therefore require, &c. By virtue of which said order of removal, the said paupers were removed to *Ryton*, and *Ryton* gave notice of appeal. And Mr. *Ambler*, being of counsel with the respondents, having stated to the court that the said *Sarah Kidson* obtained a legal settlement in the township of *Ryton* afore-

On removal of a wife, it is enough in the first instance to prove her maiden settlement.

said.

1778.
 R. v. INHA-
 BITANTS OF
 RYTON.

said, when she was a single woman, and before her marriage with the said *Benjamin Kidson*, by being hired for a year, and serving a year under that hiring, in the same township, to one *Joseph Robson*; that the said *Sarah Kidson* afterwards intermarried with the said *Benjamin Kidson*, by whom she had issue the pauper, *Hannah*; that the said *Benjamin Kidson*, is now in *America*, and it is not known whether he is living or dead; that the place of his legal settlement is not known, and that therefore the pauper had been removed to the place of settlement of the said *Sarah Kidson* before her marriage. Mr. Solicitor *Gyll* and Mr. *Hopper*, being of counsel with the appellants, objected to the said order or warrant of removal, and the adjudication thereby made, and to the respondents going into evidence thereon of the facts stated by the said Mr. *Ambler*, and prayed that the said order or warrant of removal might be quashed; forasmuch as it was not stated by the said order or warrant, that the said *Benjamin Kidson* was dead, nor that any evidence was given that he was dead, nor that the place of his settlement could not be known: whereupon, and upon hearing what was alledged by the said Mr. *Ambler* in support of the said order or warrant of removal and adjudication, this court is of opinion that the same is good and sufficient in point of form: and that the respondents may go into evidence of the facts stated to the court by the said Mr. *Ambler*, in order to fix the settlement of the paupers in the township of *Ryton*, by reason of the servitude of the said *Sarah Kidson* there, before her marriage with the said *Benjamin Kidson*: and then, upon hearing the evidence of the respondents, whereby all the facts stated by the said Mr. *Ambler* were fully proved, It is ordered, &c. that the appeal be disallowed, and the said order, &c. confirmed.

Chambre was to have shewn cause in support of these orders; but the court calling upon the other side,

Davenport in support of the rule to quash them, insisted, that it appeared upon the face of the original order, as also by what was stated to have been done at the sessions, that that court had been obliged to state something to supply the defect of the original order, which they confirmed. That that order set forth only the settlement of the wife before marriage; but, though the pauper was removed *eo nomine* as a married woman, did not state whether her husband had gained a settlement, or that such settlement could not be found; or even that he had been capable of gaining a settle-

ment, or that he was dead. That this was an objection therefore not of form, but material, and of substance; for that the order does not point out to those that complain, that the settlement of the husband was in question; that they were not therefore prepared to meet this fact in proof; and that the court of quarter sessions ought at least to have respited the appeal, and given the appellant time to have made inquiry. That in the case of [a] the King v. the Inhabitants of *Norton*, the order was quashed; because it did not appear upon the face of it, that the husband of the pauper had any legal settlement in *England*: that this case had indeed afterwards been reprobated by *Ryder*, Ch. J. in the case of [b] the King v. the Inhabitants of *St. Botolph's without Bishopsgate*; but that there it was stated, that the husband had no settlement; whereas here it neither appeared upon the original order whether he had a settlement, or was dead, or even whether either were matter of doubt. That without an adjudication in one respect or other to the above effect, the appellant could not have notice; and therefore that the sessions ought to have pronounced upon the validity of the order, and not have heard evidence to shew that, of which the appellants could not be aware.

1778.
R. v. INHA.
BITANS of
RYTON.

Lord *Mansfield*. The sessions say, that the evidence laid before them proved that which would make the order of the two justices right; and I think that upon the evidence the court of quarter sessions did right.

Aston, Willes, and Ashburst, Justices concurring,

Rule Discharged, and
both Orders Affirmed.

[a] H. 12 G. 2. 1738. Burr. Settl. Caf. 122.

[b] H. 28 G. 2. 1755. Burr. Settl. Caf. 367.

It seems that, however pat, there was no good ground for objection in the present case. If the original order, in its true sense, imported, that the pauper had been removed to the place of *her maiden* settlement; of this the appellant had notice by the order, and might have met this fact in proof; and therefore the objection taken was, that he had no notice that proof of her *husband's* settlement would be gone into. But, on the contrary, if the real import of the original order was, what, from the description of the pauper as *a wife*, seems rather to have been the case, the better objection would have been, that, as by the original order no notice was given of the pauper's *maiden* settlement, the appellant could not be prepared on that issue. But this could not have availed; as it has been determined in many subsequent cases, where paupers have been removed under the description of *widow or wife*, that it is in the first instance enough to prove the pauper's maiden settlement. Tr. 22 G. 3. 1782. Rex v. the Inhabitants of *Henfingbam*, *Post*. H. 23 G. 3. 1783. Rex v. the Inhabitants of *Woodford*, *Post*. M. 24 G. 3. 1783. Rex v. the Inhabitants of *Edifore or Hedjor*, *Post*.

1778.

Rex v. Inhabitants of Hinxworth.

BY order dated the 17th of June, 1776, two justices, *George Prescott* and *Francis Morland*, Esquires, remove *SARAH Griffin*, the wife of *Joseph Griffin*, and their five children, from the parish of *Chestnut* in the county of *Herts*, to the parish of *Hinxworth* in the same county. To this order there was no appeal.

By another order, dated the 30th of October 1776, two other justices, *George Jennings* and *Hall Wortham*, Esquires, remove *JOSEPH Griffin*, *Sarah* his wife, and their five children, from *Hinxworth* to *Chestnut*.

To this order *Chestnut* appealed at the next *Epiphany* sessions, *January 13, 1777*; insisting, that the former order, unappealed from, was conclusive as to the whole family: but the sessions, after hearing evidence respecting the husband's settlement, confirmed the order with respect to him, and quashed it with respect to his wife and children.

Soon afterwards the wife went with her children to her husband, then resident, under this last order, at *Chestnut*: in consequence of which, by an order dated the 20th of *January 1777*, *George Prescott* and *Francis Morland*, Esquires, who made the first order of justices, dated the 17th of *June 1776*, remove the five children from *Chestnut* to *Hinxworth*.

To this order at the next *Easter* sessions, *April 7, 1777*, *Hinxworth* appealed; and the sessions confirmed the order, except as to two of the children, who, as nurse children, were not removeable.

Monday
May 12.

In *Easter* term, *Stanley*, on behalf of the parish of *Hinxworth*, moved to affirm the second order of two justices, dated the 30th of *October, 1776*, removing the whole family; and to quash the first order of sessions, *January 13, 1777*, made thereupon, as far as it confirms the said order of justices relative to the wife and children: (whom, contrary to the truth and real merits of the case, if then open to discussion) it had adjudged to be settled at *Hinxworth*; and also quash to the third and last order of justices, dated the 20th of *January 1777*, for removing the five children from *Chestnut* to *Hinxworth*; and the second and last order of sessions, confirming the same, as far as relates to the settlement of the children therein

named, and to the present removal of the two youngest of the children.

In *Trinity* term, *Wallace*, on behalf of *Cbesbunt*, moved that the court of quarter sessions, who in obedience to the *certiorari* issued, had returned the several orders, and nothing more, might also state such facts, as would enable the court to draw a conclusion, whether they had done right or wrong.

At the ensuing *Michaelmas*, the sessions stated the following facts: That *Joseph Griffin*, the pauper, *Sarah* his wife, and their five children, viz. *Jane*, aged about fourteen years, *Elizabeth*, aged about twelve, *William*, aged about ten, *Joseph*, aged five, and *John*, aged about two years, were resident and inhabiting in the parish of *Cbesbunt*, in the county of *Hertsford*, in the year 1776. Prior to the 17th of *June* 1776, *Joseph Griffin*, the pauper, had left the parish of *Cbesbunt*, and abandoned his wife and five children. In his absence, and without his examination, upon a complaint of the officers of *Cbesbunt*, that *Sarah*, the wife of *Joseph Griffin*, the pauper, and the five children, were become chargeable to the parish of *Cbesbunt*, two justices on examination of *Sarah*, the wife of the pauper, on oath and on other circumstances, made an order of removal dated the 17th of *June* 1776, for removing *Sarah*, the wife, and the five children, from *Cbesbunt* to the parish of *Hinxworth*, in the county of *Hertsford*, as the place of the legal settlement of *Joseph Griffin*, the pauper, [a] nither of the children having gained any settlement in their own right: which said order hath never been appealed from by the said parish of *Hinxworth*. Before the 13th of *October* 1776, *Joseph Griffin* the pauper, came to his wife and children, then resident in the said parish of *Hinxworth*, and upon complaint of the officers of *Hinxworth* to two magistrates, that *Joseph Griffin*, the pauper, *Sarah* his wife, and their five children, were become chargeable to the parish of *Hinxworth*, the magistrates, upon examination of *Joseph Griffin*, the pauper, and on other evidence, adjudged the place of the legal settlement of *Joseph Griffin*, *Sarah* his wife, and their five children, to be in the parish of *Cbesbunt*: and by the order of removal, dated the 13th day of *October* 1776, they were accordingly removed to the parish

1778.

R. v. INHABITANT of HINXWORTH.
Saturday,
June 14.

Removal of woman, as a wife, imports, that it is to her husband's settlement. An order unappealed from is conclusive.

[a] The order did not in terms set out this fact. It only described her as *the wife of Joseph Griffin*. As this therefore was only matter of inference, though the true and the legal inference, and the principle no doubt upon which these magistrates acted, yet it ought not to have been stated as a fact.

1778.
 R. v. INHABITANTS OF
 HINX-
 WORTH.

of *Cbesbunt*. From this order of removal the parish of *Cbesbunt* appealed to the *Epiphany* sessions held for the county of *Hertford*, on the 13th *January*, 1777. It was then objected by the appellants, that the order of the 17th *June*, 1776, was alone, being unappealed from, conclusive as to the whole family; because the wife had been removed to *Hinxworth*, as to her husband's settlement, which settlement *Hinxworth* by not appealing from, had admitted, and were concluded from controverting. The sessions over-ruled the objection; and, after hearing evidence concerning the settlement, of *Joseph Griffin*, the husband, confirmed the order of removal as to the said *Joseph Griffin*, but vacated the order of removal as to *Sarah* the wife, and the five children. Before the 20th of *January*, 1777, *Sarah*, the wife of *Joseph Griffin*, and the five children, went to *Joseph Griffin*, the pauper, in the parish of *Cbesbunt*; and upon complaint being made by the officers of *Cbesbunt* to two magistrates, that *Jane Griffin*, *Elizabeth Griffin*, *William Griffin*, *Joseph Griffin*, and *John Griffin*, children of *Joseph Griffin*, the pauper, and *Sarah* his wife, were likely to become chargeable to the parish of *Cbesbunt*; the magistrates by an order dated 20th *January* 1777, removed the said five children from *Cbesbunt* to *Hinxworth*, as the place of their legal settlement.

From this order of removal the parish of *Hinxworth* appealed to the *Easter Sessions*, held for the county of *Hertford*, on the 7th day of *April*, 1777, and the justices in sessions confirmed the order of removal, except as to the two youngest children, viz. *Joseph* and *John*, who were by reason of their tender years, inseparable from their mother upon account of nurture.

Thursday,
November 27. *Stanley*, in addition to what he had moved on *Monday*, *May* 12, the last day of *Easter* term, now also moved to quash the first order of *Justices*, dated the 17th of *June* 1776, removing the wife and children from *Cbesbunt* to *Hinxworth*.

Saturday
February 7. *Thornton*, on behalf of the parish of *Cbesbunt*, now shewed cause against the order of the *Epiphany* sessions, *January* 13, 1777, and in support of the order of the 17th of *June*; and insisted, that the principal question arose upon the effect of the first order unappealed from: *i. e.* to what extent it was conclusive; for that nothing was more settled, that that an order unappealed from is, generally speaking, final: That by such acquiescence the parish, to which the removal is made, has allowed its merits; and, having so done, has for ever precluded itself from controverting its legality. That it was material to inquire into the facts established by the first order;

order; for if it decided upon the settlement of the husband, he and all his family were then unquestionably fixed in *Hinxworth*. Now the justices removed *Sarah Griffin*, calling her *the wife of Joseph Griffin*, and, as such to the place of her husband's settlement. The case also expressly finds this fact. This removal is submitted to. The consequence therefore of this acquiescence is, an admission that the settlement of the husband was at *Hinxworth*, and that that settlement was communicated to the wife; for to admit the effect must be here to admit the cause; and the admission of the derivative, must be an admission of the original, settlement. Such therefore being the extent of the first order, and the acquiescence under it being proved by its being unappealed from, the sessions ought not upon the second order, to have heard any other evidence respecting the settlement of the husband than that of the first order; as it was impossible to enter into that question, without at the same time making an inquiry into the merits of the first order, which had been acquiesced in; and the very foundation of which was the husband's settlement: and he insisted upon the case of [a] *the King v. the Inhabitants of Woodchester*, as in point; and that the law would no more allow the party, who had acquiesced, afterwards to impeach the settlement of the husband in the present case, than it did there the impeachment of the marriage.

1778.
R. v. INHABITANTS of
HINX-
WORTH.

Wallace, on the same side, said, that he could add nothing to Mr. *Thornton's* argument.

Bearcroft and *Stanley* supported the rule to quash *the first order of justices*, dated the 17th of June 1776, removing *the wife and children*, &c. And *Bearcroft* admitted, that the question was, upon the extent in which the terms of the first order concluded the parties; but insisted, that that could extend no farther than appeared upon the face of it. The fact of the husband's being removed by the first order, as to the place of his settlement, does not appear upon the face of that order; and is therefore now improperly stated in the case. It was a conclusion made by the sessions in point of law; and must have been so: for they had no evidence, no facts before them on which they could ground it: and therefore that, as the husband was no party, this court would think, that the sessions did right, upon the second order, in entering into the merits of the husband's settlement, which had never before been

[a] 2 Str. 1172, M. 16 G. 2. 1742. Burr. Settl. Cas. 191.

1778.
 R. v. INHA-
 BITANTS OF
 HINX-
 WORTH.

inquired into; and determining, according to the undoubted truth and justice of the case, that he was settled at *Chestnut*; the settlement of the husband not appearing to them upon the face of the order, either in terms, or as a necessary and inevitable consequence of what is there stated, ever to have been adjudged. That it certainly was not an unavoidable consequence; for the wife might have been removed to *Hinxworth*, as to the place of her *maiden* settlement; because her absent husband was at that time supposed to be a foreigner, or had no known settlement: that the court, for the purposes of justice, would presume this: that this was highly probable, from the conduct of the other side, who had inserted in the case what did not appear upon the face of the first order; that the wife was removed as to the place of her *husband's* settlement. That the omission of this circumstance in the order, distinguished the present from the case of the marriage, that had been cited; where the husband and wife were *together* removed to the place of *his* settlement. If therefore the question was, to what extent the first order unappealed from was to conclude, the court, in measuring that extent, would look no farther than that order.

Stanley. This is a mere trick in the parish of *Chestnut*, which the court will not favour, to take advantage of the husband's absence. That in the case of (a) the King v. the Inhabitants of *Bentley*, the reasoning of the court seemed to shew, that the first order was not conclusive upon the husband, because he was not a party; and therefore that, in the present case, the parish of *Hinxworth* was not estopped from going into his settlement upon the second order.

Lord Mansfield. The pauper does not complain. There is nothing at all in this case. The first order unappealed from is conclusive. It is agreed on all hands, that it would have been so, had the settlement of the husband been expressly stated in that order to have been at *Hinxworth*. Then the question made is, whether there arises a necessary implication, that upon the face of the order his settlement is there? Now the general rule of law is, that the settlement of the wife and children must depend upon that of the husband: 'tis true, there may be special and excepted cases; as where the husband has no settlement, or cannot be found to give an account of it: and these would be exceptions from the general

[a] E. 30 G. 2. 1757. Burr. Settl. Cas. 425.

rule. But, unless such special circumstances are stated, we are bound to presume in favour of the general rule. The parish of *Hinxworth* have neglected to appeal at the time they were aggrieved; and their being too late now is their own fault.

1778.
R. v. INHABITANTS OF
HINX-
WORTH.

Willes, Justice. In the order she is called his wife.

Aston and *Ashurst*, Justices concurring.

Rule Discharged.

The order of justices, dated the 17th of *June*, 1776, removing the wife and children from *Chebbunt* to *Hinxworth*, Affirmed; and the order of justices, dated *October* 30, 1776, the order of sessions, dated the 13th of *January* 1777, the order of Justices of the 20th of *January* 1777, and also the order of sessions, dated *April* 7, 1777, Discharged.

This decision has since been confirmed in the case of the King v. the Inhabitants of *Leigh*, Mich. 19 G. 3. 1778. *Post.* and a stronger case, that of the King v. the Inhabitants of *Towcester*, occurred in H. 25 G. 3. 1785. *Post.* where a woman and her four children, in her husband's absence, were removed to the place of her last legal settlement, the order setting out nothing more; though in point of fact, she was a *feme covert*, and the removal was made to the place of her husband's settlement. On removal of the husband by a subsequent order, confirmed by the sessions, from the parish to which his wife and children had been removed, and where, upon his return, he had gone to live with them, the court upon a case stated granted a rule, which was without opposition made absolute for quashing both these last orders.

1778.

Easter Term

18 Geo. 3. 1778.

Saturday
May 9.

Rex v. Inhabitants of St. Bartholomew by the Exchange.

Where the dispensation of a week's service at the end of the year is *bona fide*, tho' a new service is entered upon, a settlement is acquired by the first service.

TWO Justices remove *Ursula Owen* from the parish of *St. Faith* under *St. Paul's* in the city of *London*, to the parish of *St. Bartholomew* by the *Exchange* in the said City. The Sessions on appeal confirm the order, and state the following case:

That the pauper, *Ursula Owen*, a single woman, was hired by the year to *Mr. Lewis Diedrick Hesbuysen* in the parish of *St. Bartholomew* by the *Exchange*, *London*, on the 11th *June* 1771: That in the month of *April* following, *Mr. Hesbuysen* went to *Manchester* and purchased a manufacture there, and upon his return in the same month he told all his servants that he was going to reside at *Manchester*, but did not mention any time; and that they might look out for other services if they chose, or they might stay with him till he went to *Manchester*. That the pauper *Ursula Owen* did not look out for any other service, but continued with her master till the 4th day of *June* following; on the evening of which day her master paid her the whole year's wages, and gave her half a guinea over, and the same evening left *London* and went for *Manchester*. That *Mr. Hesbuysen* did not know in the morning of the 4th of *June*, that he should leave *London* in the evening, or even before the expiration of the year's service:

But

But that his going was quite a casual matter, and depended upon circumstances which he could not at that time foresee: That if he had remained in *London* he should have continued the pauper in his service, as she was a good servant; and that the pauper went into a new service two days after her master left *London*.

1778.
R. v. INHABITANTS OF
ST BARTHOLOMEW by the
EXCHANGE.

Silvester began to shew cause in support of these orders; but, Lord *Mansfield* calling upon the other side, *Howorth*, in support of the rule to quash them, insisted; that the master, having left his place of abode with a declared intention never to return, and having on that account discharged his servants before the end of the year, it must be taken as a compleat dissolution of the contract: that whether the whole, or a rateable proportion only, of the wages were paid; or whether months, or a week only, of the service were left unperformed, was totally immaterial. That the conduct of the servant in making a new contract and entering upon her service under it two days afterwards, plainly shewed the light, in which she understood it. Tho' at first it might be considered only as a dispensation of the service for the remainder of the year, yet, still as that dispensation was in favour of the servant, she might waive it and dissolve the contract: That she must be taken as having done so here; or it would be holden that the pauper could be gaining two settlements at the same time under different contracts; which would be absurd. He relied strongly on the cases of [a] the King v. the Inhabitants of *Castlechurch*, and the King v. the Inhabitants of *Godalming*, H. 12 G. 1. cited in that case: in both which cases, upon a separation by consent about a week before the expiration of the year, and the whole wages paid, the court held, that it was a determination of the service. He also cited the case of [b] the King v. the Inhabitants of *Caverswall*, and said, that the circumstance in the present case of the new contract and service entered into, and the new settlement for the second year being in the act of acquiring during the lapse of the first, clearly distinguished this from the case of [c] the King v. the Inhabitants of *Richmond*: and that to hold this a settlement, would be to repeal the stat. 8 & 9 W. 3. c. 30. by which servants must *continue and abide* in their service during a whole year.

[a] M. 9 G. 2. 1735. Burr. Settl. Caf. 68.
[b] E. 31 G. 2. 1758. Burr. Settl. Caf. 461.
[c] E. 13 G. 3. 1773. Burr. Settl. Caf. 740.

1778.
R. v. INHA-
BITANTS OF
ST. BARTHO-
LOMEW by the
EXCHANGE.

Dunning and *Silvester* in support of the orders, insisted, that this was no dissolution of the contract: that in the case of [a] the King v. the Inhabitants of *Christchurch*, where there was an absence of seventeen days on account of illness at the end of the year, and the servant looked upon herself as discharged, the court held that *continuing and abiding* in the service means not deserting it; and that such servants have their settlement as a *reward*: and here it is stated, that the pauper is a deserving servant. The object of the stat. 8 & 9 W. 3. was to prevent servants running away; and therefore it was inapplicable to this case. That the true question was, whether this was a dissolution of the contract or a dispensation of the service? That, if the master had altered his mind and returned to his house, the servant would have continued with him; and the relation of master and servant could only be destroyed by a desertion. Should not the servant have the *reward* she had merited? Should her master's kindness place her in a worse situation than she would otherwise be in? Should the remainder of her service be dispensed with, and should she not make the same advantage of the time given her as any other servant who had fulfilled his contract? This case therefore could not be distinguished from the King v. the Inhabitants of *Richmond*: That in that case all the authorities cited on the other side had been insisted upon, and overruled: and they agreed, that, if it was with leave, the time of absence, was immaterial; and to this point was cited the case of [b] the King v. the Inhabitants of *Neither Heyford*.

Lord Mansfield. The only question is, Whether the servant continued *bonâ fide* in her service during the whole year? To be sure there is a distinction between exceptions from the contract and dispensations of the service: but if the case be of the latter description and *bonâ fide*, it can make no difference, when the servant is engaged or where; or whether the service be in the same or another occupation. Why then does she quit the service? At the desire and for the convenience of her master, who gave her half a guinea beyond her wages, as an equivalent no doubt for her board. It was accidental and a favour to the master. The case of the King v. the Inhabitants of *Richmond* is full as strong as this; for there a new servant came into the very place which the pauper had vacated upon a dispensation of his service. Fraud viti-

[a] E. 33 G. 32. 1760. Burr. Settl. Cas. 494.

[b] E. 32 G. 2. 1759. Burr. Settl. Cas. 479.

Easter Term 18 Geo. 3.

51

ates every thing; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant country [a], and had no other settlement, shall she lose her only one, which she deserves so well?

1778.

R. v. INHABITANTS OF
St. BARTHOLOMEW by the
EXCHANGE.

Willes, Ashurst and Buller, Justices, concurring,

Rule Discharged, and
Orders Affirmed.

[a] See the words of *Foster J.* in the case of the King *v.* the Inhabitants of *Christ Church*.
Burr. Settl. Cas. fo. 498. *ad finem*.

Trinity Term

18 Geo. 3. 1778.

Rex *v.* Inhabitants of Hedfor.

Saturday
June 27.

TWO justices remove *William Monk*, *Jane* his wife, and their four children, from the parish of *Little Marlow* in the county of *Bucks*, to the parish of *Hedfor* in the same county. The sessions, on appeal, confirm the order, and state the following case:

H 2

That

1778.

R. v. INHABITANTS OF HEDFOR.

Servant sleeping with his wife, without his master's knowledge, out of the parish, in which his master lives, gains a settlement there.

That *William Monk*, the pauper, being legally settled at *Bampton* in the county of *Oxford*, the place of his birth, about ten years ago, then being unmarried, was hired to the right honourable *William*, Lord *Boston*, of the parish of *Hedfor* in the said county of *Bucks*, for a year, as a gardener, and served him there several years: that about ninety-five days before the expiration of the fourth year's service, he married a woman of the parish of *Little Marlow*; and, from the time of his marriage, and till the expiration of that year's service, he lodged with his wife in the parish of *Little Marlow* forty nights, but not successively; and did not lodge forty nights elsewhere from the time of his marriage, till the expiration of the year in which he married. It does not appear that Lord *Boston* had any property whatever in *Little Marlow* parish. It also appears that he did not see Lord *Boston* within that year he married; also it appears he never asked his master's consent to be absent for the said forty nights, in which he lodged at *Little Marlow* or any part of it; nor did his master give any consent for such absence; it does not appear where he lodged the last night of that year in which he married, and which completed his service with Lord *Boston*, under the hiring and service for a year; it also appears that he never performed any service whatever in *Little Marlow* on account of his said master, Lord *Boston*; that he continued to serve his master Lord *Boston* several years after his marriage.

Dunning shewed cause in support of these orders; and contended, that the inclination, which the court has always shewn in favour of settlements in consequence of service, need not be indulged in the present instance, because without question the pauper had gained a settlement in the service of the first year. The only doubt was upon the service of the last. Formerly it was questioned, whether the service ought not to be in the same house; and though it was thought sufficient, if in the same parish, yet it has since been holden; that if a servant continues forty days in a parish in *his master's service* [a], the reason why the forty days gain a settlement is, because the servant comes into such parish *with* his master: and that the court would not permit a servant, in a parish where his master had no property, and where he was not in his

[a] *Silvertown and Ashton*, Tr. 12 Ann. *Foley*, 188.

master's service, where consequently he ought not to have been, and where in point of fact his master did not know that he was, clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him, so to gain a settlement.

1778.
R. v. INHABITANTS OF
HEBDSOR.

Wallace, Solicitor General, in support of the rule to quash the orders. A variety of cases have decided that a man is settled where he lodges the last forty days. Neither need these days be successive. The case of [a] the King v. the Inhabitants of *Castleton* is in point. The only difficulty is, whether the want of the master's knowledge of the fact can make any difference? If his master's business is done as well as if he lodged in the family, which the case shews it must have been, it can make none.

Lord *Mansfield*. The cases seem to have settled it.

Willes, *Ashburst*, and *Buller*, Justices, concurring,

Rule absolute, and both
Orders quashed.

Rex

[a] M. 7 G. 3. 1766. Burr. Cas. 569.

It is observable, that the King v. the Inhabitants of *Castleton*, and the other authorities therein cited, relative to a settlement being gained by lodging forty days, are all in the case of apprentices; with respect to whom there could hardly have been a doubt; for the words of the stat. 3 W. & M. c. 11. sect. 8. respecting apprentices are, "If any person shall be bound an apprentice by indenture, and shall inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement." But the preceding section of this statute enacts respecting servants, "That if any unmarried person, &c. shall be hired into any parish or town for one year, such service shall be adjudged a good settlement therein." Upon this statute, before the adjudication of the present case, the authority of which governed a subsequent one, that of the King v. the Inhabitants of *Nympsfield*, H. 21 G. 3. 1781. *Post*. this point would have admitted of some doubt; for there are many cases that seem to favour a contrary idea with respect to servants. In the case of the King v. the Inhabitants of Saint George's, *Hanover Square*, M. 8 G. 2. 1734. Burr. Settl. Cas. fo. 16. Lord *Hardwicke*, even in the case of an apprentice, says, "If the apprentice, by the consent and upon the business of the master, resides in a second parish, (and we must take this to be the business of the master, because he consented) he gains a settlement;" and, in the argument, the difference between an apprentice and servant is admitted to be; that the apprentice must be bound by indenture, and the hired servant must be hired for a year, and serve for a year: but in the other case (that of an apprentice) the last forty days residence and lodging gives a settlement. In the King v. the Inhabitants of *Charles*, Tr. 12 G. 3. 1772. Burr. Settl. Cas. 706. which was

1778.

Rex v. Inhabitants of St. Giles's, Reading.

Saturday
June 27.

TWO justices remove *Daniel Davies*, *Elizabeth* his wife, and their five children, from the parish of *Monk Sherborne* in the county of *Hants*, to the parish of *St. Giles's, Reading*, in the county of *Berks*. The sessions, on appeal, confirm the order, and state the following case :

Services in successive years, without a new agreement, will connect only, when the servant at the commencement of the succeeding year is unmarried. Settlements are in recompence of the benefit of the pauper's labour.

That the pauper, *Daniel Davies*, being an unmarried man, on the 19th day of *December*, 1763, went into the service of Mr. *William Wilder*, who then kept the *Bear Inn*, in the parish of *St. Mary* in *Reading*, in the county of *Berks*, under a general hiring as a post boy, and continued in that service in the said parish for the space of seven months, where he married his present wife, *Elizabeth*. After his said marriage he remained in his said master's service in the said parish, for the space of four months, when he took lodgings in the parish of *St. Giles's* in *Reading*, and removed thither with his said wife, where he slept for the space of seven months, continuing to serve his said master for the whole of the said last mentioned seven months, without coming to any new hiring, and so served his said master for the space of eighteen months in the whole, and then left his said master's service.

was the case of an apprentice. *Aston, J.* The performance of actual service is not the thing material : it is the residence, the inhabitancy of an apprentice in a town or parish for forty days, that gains the settlement. Vide the note upon the next case ; the King v. the Inhabitants of *St. Giles's, Reading*. And in the King v. the Inhabitants of *Bath Easton*, E. 14 G. 3. 1774. Burr. Settl. Caf. fo. 778. *Aston J.* also says ; It is the last forty days service, that gains a settlement to the servant in the place where it is performed. And this line is expressly drawn in the King v. the Inhabitants of *St. Peter's on the Hill* in *Chesler*, Bott, 154, where *Lee, Ch. J.* says ; " There is a distinction between apprentices and servants. As to apprentices, the statute " is, that they gain a settlement by binding and inhabiting, not by binding and service ; but " servants gain a settlement by hiring and service, without regard to inhabiting. But see R. " v. *Graveny*. I find this case in Fort. 221. It was the case of a servant, whose master's house stood in two parishes. The master lay, and all the service was done, in one parish ; the servant lay in the other, but in the same house. The question was referred to *Eyre*, Judge of Assize ; who conferred with two other judges, and all three were of opinion, that the servant was settled in the parish in which she lay. With respect to this case, I conceive it to have been decided upon the clearest principle ; neither can any other arguments be used against it, than such as are founded in a literal adherence to the phrase and wording of the case : viz. that all the service was done in that parish and part of the house in which the master lay : whereas in fair construction and plain sense I conceive, that the servant must be taken to have done service sufficient for the purpose of giving a settlement, in every room of her master's house, in which his order or the oeconomy of the family might make it necessary for her at any time to sleep. The King and the Inhabitants of *Feverham* and *Graveny*, Pasch. 7 G. 1. The very ground of the doubt in this case seems to fortify the above reasoning. This case is also reported, but imperfectly, in *Foley*, 198.

Wilson,

Wilson, J. and Burton, shewed cause in support of these orders; and said that it had frequently been determined, that marriage did not put an end to the contract between master and servant; and that the word "unmarried" in sect. 7. of stat. 3 W. & M. c. 11. went only to the hiring, and not to the service: and cited the case of *Farrington and Witty*, P. 1 Ann. and *Farrington and Wilcot*, E. 2 Ann. in 2 Salk. 527 and 529: that this being so, and no new agreement having been entered into, the service of the first and second year were to be connected and referred to the same original hiring; when, the pauper being an unmarried man, the place, where the last forty days were served, was his settlement: and that to this, the case of [a] the King v. the Inhabitants of *Croftcombe*, was in point.

1778.
R. v. INHABITANTS OF
St. GILES'S,
READING.

Kerby and Lawrence, in support of the rule, admitted that marriage does not dissolve an existing contract; but that the marriage must have been had during the year; at the beginning of which there could have been a legal contract: that, though it was true that the general rule, that a general retainer was a retainer for a year, had been extended by construction beyond a year, yet that the court would be careful, that the particular rule of construction should not destroy the principle of the general rule: that the doctrine of the sameness of the contract, and its relation to the original hiring, holds in the case of unmarried persons, who are capable of renewing their contract at the expiration of the year; but not so, as here, in the case of persons married at the time, who by the express provision of the statute are incapacitated: that, if this relation could be carried over to the second year, a man, who happened to be hired in his first year's service a week before he married, might, in direct contradiction to the policy of the statute, burthen the parish in which he was first hired with all the children he might have during the course of his life: and that the case of the King v. the Inhabitants of *Croftcombe* was totally inapplicable; because there, at the time of the constructive hiring, in the beginning of the second year, the pauper was unmarried.

Willes, Ashburst, and Buller, Justices, thinking the point new, took time to consider.

[a] M. 19 G. 2. 1745. Burr. Settl. Cas. 256. 2 Stra. 1240.

Willes,

1778.

R. v. INHABITANTS OF
ST. GILES'S
READING.

Saturday,
July 4.

Willes, Justice, the court being then full, delivered the judgment of the court.

This case depends upon the construction of the 7th sect. of stat. 3 W. & M. c. 11. The act was intended for the benefit of unmarried persons; and the principle of it is, that the parish that reaped the benefit [a] of the labour of a man unincumbered with a family, ought to make a provision for that man, when disabled or incapable of working and providing for himself; but not for others from whom they had derived no benefit: that the burthens they were to be subjected to should be equal and correspondent, not unequal and disproportionate, to the benefits received from the pauper's labour. Then the stat. 8. & 9 W. 3. c. 30. uses the very same words as the former statute: unmarried persons not having "child or children." The meaning of these acts is obvious: that the labour of one man shall not be sufficient to encumber a parish with the maintenance of a numerous family. As to the other ground, the law is, as has been determined this term in the [b] case of the King v. the Inhabitants of *Hedfor*, and [c.] the King v. the Inhabitants of *Hanbury*; that marriage does not dissolve the contract, if it happen during the year in which a man has been hired as a single man. To such only the benefit of the act was meant to be extended; and for this reason, that married persons ought to continue in the settlement, acquired previous to their marriage. If there had been a residence of forty days in the parish of *St. Giles* at the end of the first year, the pauper would have been well settled there: it would have been within the case I have cited of the King v. *Hedfor* but that is not the present case. The case of the King v. *Croftcombe* does not apply, 1. Because that was the

[a] And so this is laid down by Lee, Ch. J. in the King v. *Croftcombe*: and, no doubt, whether it be or not the legal ground, on which the settlement stands, it was the motive and inducement of the legislature in passing the act; and yet, in the case of the King v. the Inhabitants of *Charles*, Tr. 12 G. 3. 1772. Burr. Settl. Cas. 706. Aston, J. with the concurrence of Willes and Ashhurst, Justices, says thus: "I know it has been said, that *the benefit the parish has received from the labour of the pauper* is the reason of gaining a settlement in it. "But that is not the true reason; it is the *residence or inhabitancy* for the last forty days, that "gains the settlement." But, that being the case of an apprentice, it went not, I presume, upon the 7th sect. of the act, upon which the judgment in the present case professedly does, but upon the 8th sect. to which in the margin the reporter refers; and, if so, is conformable to the doubt suggested in the note on the last case. The 7th sect. of the act is confined to hired servants; the 8th to apprentices.

[b] *Ante*, p. 51.

[c] Tr. 26 & 27 G. 2. 1753. Burr. Settl. Cas. 322.

case of a servant unmarried during the whole of the year. 2. Because the court did there presume the continuance of the old contract.—Here the pauper was incapable of making a new contract at the commencement of the second year: Presumption can go no further; and at that time he was a married man. In this case, suppose at the end of the first year a new agreement had been made between the master and servant? A service under that could not have given the pauper a settlement. Shall he then by an implied contract do that, which in express and direct terms he could not do? If the original hiring were constructively to be continued throughout the second year, it might last for twenty years; and parishes, on such a construction as is contended for in support of these orders, might be burthened by retrospect with families from whose labour they had received no benefit. We are all of opinion, that both orders ought to be quashed.

Rule absolute.

1778.

R. v. INHABITANTS of
St. GILES'S,
READING.

Rex v. Inhabitants of Welford.

Wednesday,
July 1.

TWO justices remove *John Dyer*, *Elizabeth* his wife, and their child, from the parish of *Feckenham*, in the county of *Worcester*, to the parish of *Welford*, in the county of *Gloucester*. The Sessions on appeal confirm the order, and state the following case:

Servant, father of a bastard child, may be discharged by his master.

That the pauper, *John Dyer*, being legally settled in the parish of *Welford*, and not having wife, child, or children, did about two years since, hire himself for a year as a servant to *John Truslove* of the *Hamlet* of *Samborne*, in the county of *Warwick*, and continued to live with his said master at *Samborne* aforesaid, till within three weeks of the expiration of the year; when the master on account of a *supposed* criminal intimacy between the pauper and a servant girl then big with child, who had lived with the master, but was discharged from his service, insisted upon his quitting the service, and discharged him accordingly. The pauper being asked whether, if his master would have let him, he would have staid: he replied, that he would. That the master offered the pauper all his wages except four shillings; which the master insisted upon detaining, as a satisfaction for the loss of the pauper's service for the said three weeks;

1778.
 R. v. INHA-
 BITANTS of
 WELFORD.

weeks ; but which the pauper refused to allow. That the pauper, after he was turned out of his service, went to a justice of peace in order to recover his full wages ; but the justice telling him he could not recover the whole, and the pauper having no money to subsist upon, accepted the money the master had offered him, abating the four shillings for the three weeks : and that no order in writing was ever made by any justice or justices for discharging the said pauper from his said master's service.

Bearcroft and *Caldecott* shewed cause in support of these orders ; and insisted, that the service in this case was not compleated either in point of law or in fact. That the principal of [a] the case of the King v. the Inhabitants of *Brampton* was upon the law in point : for that the offence was equally *contra bonos mores* in the case of a man, as in that of a woman : that however reluctantly or for whatever reasons, the pauper had, in point of fact, consented to the dissolution of the contract : and that this consent being only to an act, the effect of which, if refused, the law has given to the master by compulsion and against the pauper's will, the court would not hold such an act void ; because the pauper, though willing to do so, had not the means of controverting it. That the fact of criminality was fully proved below, and was meant by the court there to have been so stated.

Dunning, in support of the rule, to quash these orders insisted, that the fact of the pauper's criminal conduct was only hypothetically and not fully stated : that an imaginary crime could be no good cause of his discharge ; and that the court would not suffer a man's right to be concluded upon by a consent, which arose solely from the misery of his situation.

Lord *Mansfield*. Had the fact of criminality been positively stated, to be sure it would have fallen within the principle of the King v. the Inhabitants of *Brampton* ; but as the intention of finding this fact is represented to have been different from the finding ; and as there might have been a more compleat consent, the case must go down to be re-stated.

The case was re-stated at the following sessions : The fact of the pauper's criminality was positively found ; and the sessions, at the

[a] H. 17 G. 3. 1777. *Ante*, p. 11.

instance of the appellants, added the fact, that this was the case of a servant in husbandry: this was done with a view of taking it, in this respect out of the case of the King *v. Brampton*. But the case was abandoned: it never came again into *Westminster Hall*. 1778.
R. v. INHABITANTS OF WELFORD.

Michaelmas Term

19 Geo. 3. 1778.

Rex *v.* Inhabitants of Leigh.

Saturday,
Nov. 21.

TWO justices by order, dated *April 25*, 1778, remove *Alice Cooper*, wife of *Richard Cooper*, and their four children, from the parish of *Ewell*, in the county of *Surrey*, to the parish of *Leigh*, in the same county. The sessions, on appeal, *quash* this order. Order quashed is conclusive between the parties.

Two other justices by order, dated *July 22*, 1778, remove *Richard Cooper*, *Alice* his wife, and their four children, from the same parish to the same parish. The sessions on appeal *confirm* this order.

These orders being removed by *certiorari*, and it not being suggested that any act had been done, in the interval of the two orders of justices, to vary the right of settlement of the paupers, *Rous* moved to *quash* the last order of justices and the order of sessions confirming it; upon the ground, that an order *quashed* on appeal is as conclusive *between the parties*, as an order *confirmed* is *against the world*: and now *Wallace*, Solicitor General, upon the authority of [a] the King *v.* the Inhabitants of *Hinxworth* acknowledged, that these orders could not be supported,

Per curiam,

Rule absolute, and both
orders quashed.

[a] H. 18 G. 3. 1778. *Ante*, p. 42.

1779.

Hilary Term

19 Geo. 3. 1779.

Saturday,
Feb. 6.

Rex v. Inhabitants of Stockland.

Apprentice,
voluntarily
continuing
with his mas-
ter's execu-
tor, and as-
signed with
his own con-
sent, gains
settlement
by residing
40 days un-
der such as-
signment.

TWO justices remove *Rhuben Sanfon*, otherwise *Samfon*, *Elizabeth* his wife, and their two children, from the parish of *Ottertton*, in the county of *Devon*, to the parish of *Stockland*, in the county of *Dorset*. The sessions on appeal confirm the order, and state the following case:

That the pauper was bound an apprentice in husbandry, by the parish of *Stockland*, to *John Davey*, of that parish, till twenty-four: That he lived with him four years in that parish, under that indenture, when his master died. That he continued with his son, who was his executor and had proved the will, for about seven years in that parish, when the pauper being desirous of living with his uncle in the said parish of *Ottertton*, to learn the trade of a miller, his uncle with the pauper applied to the executor for his consent, who gave his consent accordingly; saying he would do any thing for the benefit of the pauper: and then the pauper made an agreement with his uncle for 1s. 6d. per week, and continued with him, in the whole, two years and a half; at the end of the first four months of which time, the pauper attained his age of twenty-four years.

Wallace, Solicitor General, shewed cause in support of these orders; and contended, that apprenticeship is merely a personal trust between the master and servant, and is determined by the death of either. That this had been settled in the case of [a] *Baxter* executrix, v. *Burfield*. That even the master himself could not in strictness assign his apprentice; though the assignment has indeed

[a] E. 20 G. 2. 2 Str. 1266. Bott. 173.

been

been considered as evidence of the master's consent, that his apprentice might go into another service: but if the consent of the original master was not strictly valid, it would be too much, after his death, when all personal trust has been adjudged to have ceased, to say that the same effect should flow from the consent of the executor.

1779.
R. v. INHABITANTS OF
STOCKLAND.

Dunning and Fanshawe, in support of the rule to quash these orders, insisted; that the case of [a] the King v. the Inhabitants of *East Bridgeford*, must govern this: that it is there decided, that the residence of an apprentice for 40 days, with a new master under a parole assignment from the widow, without administration of his original master, gains a settlement: that, whether a master be living or dead, the assignment of an apprentice must operate equally: its subject matter, the *person* of the apprentice not being itself assignable: that if it were true, that a settlement would have been gained by a residence with the representative of the original master, after the apprentice has, as here, consented to continue with the representative, it must be gained by a residence with the person to whom he is transferred by the representative: that it has been adjudged as to assignments in the cases of [b] the King v. the Inhabitants of *Clapham*, and [c] the King v. the Inhabitants of *Tavistock*, that the consent of the original, is included in that of a subsequent, master: that consequently the assignment of the executor operated here in the same manner as it would have done in the case of the original master, and was an evidence of his consent: that, though the apprentice was not compellable to serve the representative of his first master, yet it had not been contended, that the death of the master by act of law absolutely dissolved the relation: and therefore, the apprentice having by his own election given it a continuance, that the law had, after such consent, thrown upon the representative every right with which the original master had ever been invested: that it is assumed in the case cited from *Str.* (where it was laid down, that an apprenticeship is merely a personal trust) that those who bind an infant to learn a trade must, from the nature of such a contract, act from a knowledge of the personal skill and ability of the master: but that this reasoning does not apply to the present case, that of a parish apprentice, bound to husbandry.

[a] T. 12 G. 2. 1739. 2 Str. 1115. Burr. Settl. Cases 133.

[b] E. 20 G. 2. 1747. Burr. Settl. Cases 266.

[c] T. 7 G. 3. 1767. Burr. Settl. Cases 578.

1779.
R. v. INHA-
BITANTS of
STOCKLAND.

Lord *Mansfield*. Though an apprentice is not strictly assignable, and cannot be transmitted to executors, yet if after the death of his master, he continues with the executor, in the character of an apprentice, and afterwards goes to live, with his own consent and that of all the other parties, with another person in another parish, this must be taken as a continuation of the service under the original indentures; and gives a settlement by a residence of 40 days. The case of *East Bridgeford* goes further than the present; for there the assignment was made by a widow, who had not taken out administration.

Buller J. The case of *Baxter v. Burfield*, does not at all impeach the decision of the court upon this case; for there the question was, whether the pauper was compellable to serve against his consent.

Willes and *Ashurst*, Justices, concurring,

Rule absolute and both
orders quashed.

Trinity Term

19 Geo. 3. 1779.

Saturday
June 29.

Rex v. Inhabitants of St. John, Southwark.

Paying with-
out being
rated, will
not give a
settlement.

TWO justices remove *Esber*, the widow of *Daniel Turner*, and her three children, from the parish of *Mitcham*, in the county of *Surrey*, to the parish of *St. John, Southwark*, in the same county. The sessions on appeal confirm the order, and state the following case:

The

Trinity Term 19 Geo. 3.

63

The name of the pauper's husband was inserted in the land-tax rate within the parish of *Mitcham*, in the following manner :

1779.

R. v. INHABITANTS of
St. JOHN,
SOUTH-
WARK.

Rent.	Landlords rated.	For what.	In whose occu- pation.	Sums assessed.
£. 5 0 0	<i>Oxtoby.</i>	House.	<i>Daniel Turner.</i>	s. d. 10 10

That the pauper's husband occupied the house, of which he is described as occupier, and paid the rate for several years : that the rate throughout is in the same form : That the land-tax by agreement with the landlord, was deducted from the rent.

Mingay had moved to quash these orders ; and *Rous* now shewed cause in support of them : He cited the case of [a] the King v. the Inhabitants of *Carshalton*, which the court said was precisely the present case, and the

Rule was discharged and both
orders confirmed.

[a] E. 15 G. 3. 1775. Burr. Sett. Cases 809.

Michaelmas Term

20 Geo. 3. 1779.

Saturday
Nov. 13.

Rex. v. Inhabitants of Buckingham.

TWO justices remove *Mary Swift*, widow, from the parish of *Fringford*, in the county of *Oxford*, to the parish of *Buckingham*, in the county of *Bucks*. The sessions on appeal confirm this order, and state the following case :

Certificate of a prior date, though not delivered till after the removal of the pauper, is conclusive upon a removal by the parish granting it.

That in the year 1737, *John Leicester*, the pauper's father, and herself jointly purchased a tenement, being copyhold of inheritance, situate at *Gawcott*, in the parish of *Buckingham*, for 14*l.* or 15*l.* part of which consideration money was paid by the said *John Leicester*, and the remaining part by the present pauper, and the premises were surrendered to the use of the said *John Leicester*, for his life, with remainder to the pauper in fee: that said *John Leicester* was admitted: that the pauper some few years after this purchase, and in her said father's life time, intermarried with one *Robert Swift*, who was settled in the parish of *Fringford*: that five or six years after such marriage, said *John Leicester*, her father, died; whereupon the pauper and her husband came to and resided upon these premises, and the pauper alone was admitted (according to the custom of the manor) in 1745: that they lived there chiefly to the time of her husband's death, which happened about four years ago: that on the 14th of *June*, 1776, the parish of *Fringford* granted a certificate to the pauper, under the hands and seals of the churchwardens and overseers there, and attested by two justices, residing in or near said parish, &c.

The case then proceeded to state all these acts, which appeared to be regular together with the certificate *in hæc verba*. That the certificate was delivered to the pauper and kept in her possession, not delivered to the parish of *Buckingham* till after the removal of the pauper,

Michaelmas Term 20 Geo. 3.

65

pauper, under the order above stated: that the pauper after the granting of the certificate, and before the removal, resided upon the premises upwards of 40 days upon the whole. Upon the hearing of this appeal, this certificate was offered to the court as conclusive evidence against *Fringford*, so as to prevent their setting up any settlement obtained in the parish of *Buckingham*, previous to such certificate granted: but the court are of opinion that the certificate under these circumstances is not a good certificate, or such an one as they could receive as conclusive evidence: and that the pauper has gained a settlement in the parish of *Buckingham*, by such estate and residence as is before stated, and confirm said order of removal.

1779.

R. v. INHABITANTS OF
BUCKINGHAM.

Woodde son had moved to quash these orders, on the ground, that the detention from the appellants by the pauper, till after his removal, of the certificate, granted by the parish removing, and of which that parish at the time of the removal could not be ignorant, would not intitle them to avoid the effect of it, when produced at the trial against them; but that they were thereby concluded: and no cause being now shewn;

Per Curiam,

Rule absolute, and both
Orders quashed.

Hilary Term

20 Geo. 3. 1780.

Rex v. Inhabitants of Under Barrow and Bradley Field.

Wednesday.
Jan. 26.

TWO justices remove *Thomas Halbead*, from the town and hamlet of *Ulverston*, in the county of *Lancaster*, to the township or division of *Under Barrow and Bradley Field*, in the county of *Westmoreland*. The sessions on appeal confirm the order, and stated the following case:

K

The

1780.
 R. v. INHABITANTS OF
 UNDER
 BARROW and
 BRADLEY
 FIELD.

Increase of
 wages upon
 a second hir-
 ing, for less
 than a year,
 on the day the
 first hiring for
 a year ended,
 and a removal
 into another
 parish, are
 not such a dis-
 continuance
 of the first
 service as
 will defeat a
 settlement
 under it.

The pauper, *Thomassin Halbead*, single woman, being settled in the township of *Under Barrow* and *Bradley Field*, in the county of *Westmoreland*, by a derivative settlement from her father, was hired for one year from *Whitsuntide* 1770, to *Whitsuntide* 1771, to *Daniel Burrow*, then an inhabitant in the said township of *Under Barrow* and *Bradley Field*, for the yearly wages of eighteen shillings; the pauper entered upon her service accordingly, and served and lived with the said *Daniel Burrow*, in *Under Barrow* and *Bradley Field*, under the said hiring, till the 12th day of *May* following 1771; when the said *Daniel Burrow* removed with the pauper into the township of *Strickland Roger*, in the said county of *Westmoreland*, and she there continued for seven days, in the said *Burrow's* service: which completed her service of one year under the said hiring, and received her wages of eighteen shillings; and then, being under age, hired herself again to the said *Daniel Burrow* for another year, to wit from *Whitsuntide* 1771, to *Whitsuntide* 1772, for the yearly wages of twenty-five shillings, and, under the said last mentioned hiring, continued in the service of the said *Daniel Burrow*, in the said township of *Strickland Roger*, from the said *Whitsuntide* 1771, till *Candlemas* following; when, her said master's goods being distrained and sold for arrears of rent, the pauper by mutual consent quitted her said service, and received her wages till that time.

Wilson, J. and *Wood*, shewed cause in support of these orders; and contended, that this case was distinguishable from that, which would be relied upon on the other side [a] the King v. the Inhabitants of *Croftcombe*: that here the original settlement of the pauper, and her settlement at the time of the hiring, was in *Under Barrow*: that, as she was therefore under an incapacity of acquiring any new or original settlement at *Under Barrow*, she could not have any derivative one communicated by a continuation, even if it had existed, of such first hiring: that there was such a continuation under the first contract, and that there was no new agreement, was in that case expressly stated; but that here, the first contract was stated to have been at an end, the wages received, and a new contract for a new consideration made: neither is it in this case stated, that there was no chasm, no interval between the two hirings so as to prevent their being connected for the purpose of giving a settlement: so that, added to the difference of wages, it was to every intent the same thing and must have the same consequences, as a new engage-

[a] M. 19 G. 2. 1745. Burr. Settl. Cas. 236. 2 Stra. 240.

ment with a new master: in the same manner as an old tenant making a new agreement for rent, shall no longer be considered as holding from year to year under the old demise.

Dunning, Chambre, and Howorth, in support of the rule to quash the orders, insisted; that as to the objection that a settlement could not, under the circumstances stated, be communicated in the second parish, *Lee*, Ch. J. in the *King v. Crofcombe*, which was throughout in point, said, "it was quite indifferent in *what parish* the service was, *if it was the same service*:" that the state of the case shut out the argument upon the interval between the two hirings; for, that, upon the completion of one service, *then* to be bound a second must mean *immediately*: that a reasonable space the law will allow: and that a discontinuance and absence of an hour, as in the case of [a] the *King v. the Inhabitants of Fifehead Magdalen*, and of any space of time not exceeding a day, as in the case of [b] the *King v. the Inhabitants of Ellisfield*, had been adjudged insufficient to defeat a settlement.

Lord *Mansfield*. The point is fully settled; and we are all very clear, that this was a continuance of the same service with an increase of wages.

Howorth, The leading point here happens to have been established in a case from this very parish [c].

Per Curiam,

Rule absolute and both orders quashed.

[a] M. 11 G. 2. 1737. Burr. Settl. Cases, 116.

[b] H. 17 G. 3. 1777. *Ante*, p. 4.

[c] H. 6 G. 3. 1766. Burr. Settl. Cases, 545.

1780.

R. v. INHABITANTS OF
UNDER
BARROW and
BRADLEY
FIELD.

1780.

Wednesday,
Feb. 9.

Rex v. Inhabitants of North Shields.

The justices at sessions have a concurrent jurisdiction with a justice within the parish, or of the neighbourhood, making orders for relief of the poor, and no appeal lies against any such order.

A justice of the peace made an order upon the churchwardens and overseers of the township of *North Shields*, in the parish of *Tynemouth*, in the county of *Northumberland*, (upon the oath of *Ann Irvin*, the wife of *Thomas Irvin*, a mariner and then a prisoner in *France*, that she was very poor, impotent, and not able to work for the maintenance of her three children by her said husband, to wit, *James*, aged six, *Mebitable*, aged three years, and *Ann*, aged fourteen months, and that she had applied to the overseers for relief for her said three children, and was refused) to pay the sum of two shillings and sixpence weekly, unto the said *Ann*, the mother, for, and towards the support of the said three children, until such time as they should be otherwise ordered. The sessions on appeal confirm this order, and state the following case:

That there was, at the time of issuing the said order, and now is, within the said township, a poor-house, established according to the statute made in the 9th year of the reign of his late Majesty King George the 1st; into which the said overseers were and are willing to receive the said *Ann Irvin*, with her said three children, and offered so to do; and that the said *Ann Irvin* refused to go herself with her said three children thereto; and it also appeared to this court, that the three children named in the said order are of the ages therein respectively mentioned: and that the said *Ann Irvin* hath one other child of the age of eight years, for which she did not seek relief; neither did she seek relief, for herself, or is any relief ordered for her by the said order: and it also appeared to this court, that the said *Thomas Irvin*, the husband, is a mariner, and now a prisoner in *France*, and that the said *Ann Irvin* is unable to provide for her said three children, in the said order named. And the said three children, in the said order named, are nurse-children under the age of seven years, and in the opinion of this court ought not to be separated from their said mother; neither in the opinion of this court is the said mother, not seeking relief for herself, compellable to go into the said poor-house.

Dunning shewed cause in support of these orders; and insisted, that as the mother had not here asked relief for herself, this could not be considered as the case of a person refusing to go into the parish

rish work-house, under the provisions of St. 9 Geo. 1. c. 7. s. 4 ; which were " that, in case any poor person shall refuse to be lodged, kept, or maintained in the parish work-house, &c. such poor person shall not be entitled to *ask or receive* collection or relief from the churchwardens and overseers of the poor of the parish." Had the order run in a different form, and stated only the application of the children, then under age of nurture, and ~~being unable to support them~~ who was unable to support them; and had then directed the officers to pay a proper weekly sum for their support, this objection would not have been open : can then the court either in justice or humanity put so critical and rigid a construction upon so beneficial a law, as to say, because the mother, who struggles to support her own independence, and to prevent, on her own account, any trouble or expence to be thrown upon the parish, has applied for her children, and the relief is directed to pass through her hands, that she falls within the letter of the law. That in the case of [a] the King and *Carlisle*, the relief applied for, received and ordered, was for the mother as well as the children ; and being in part personal, made that case distinguishable from the present, and brought it within the statute.

Lee and Scott. in support of the rule to quash these orders, insisted ; that the object and policy of this act was to prevent idleness, and to compel such persons as derived a support from the parish to contribute by their labour to its benefit : that the construction contended for must defeat this aim, and would enable any one to throw his whole family upon the parish, and contribute nothing himself : that the single exception to this law was under St. 19 G. 3. c. 72. s. 3. in favour of the families of substitutes in the militia : that, if parents are by law bound to support their children, to give relief to the child is, to relieve the parent : that, if this be then a benefit to the mother, derived from the parish, by the *spirit* of the law, she falls within its provisions ; and it is the argument on the other side, that rests upon the *letter* : that the King *v. Carlisle*, went upon the principle, that parents must contribute their own labour towards the support of their families ; and was a determination in point by all the judges.

Wilkes, J. inclined to the distinction taken at the bar between this case and that of the King and *Carlisle* : and said, that the pa-

1780.

R. v. INHABITANTS OF NORTH SHIELDS.

[a] M. 7 G. 3. Burn's Justice, vol. 3. p. 617. edit. 1785.

1780.
 R. v. INHABITANTS OF
 NORTH
 SHIELDS.

rish had benefit by the mother's continuing without relief, and supporting her eldest child; and that if a benefit was to be derived to *part* of her family from the parish, they were not therefore intitled to *her* labour and that of *the whole*: that all she asked was a subsistence for such of her children as were in a state of helpless infancy. Suppose the case of an accident or broken limb, must the condition of relief in such case be, that the parent accompany the child? That ~~of the poor in the next clause of the same section, which~~ speaks of the poor in parishes that unite, are, "*he, she, or they*, so refusing, &c. shall not be entitled to ask, demand, or receive, &c." I see no reason therefore why this must necessarily be considered as a case within the act at all, or why it may not be taken as an excepted case. Nor can I admit the act as conclusive, unless the case of the King and *Carlisle* is thought to have decided upon the point: but, as appears to me, the question there, was not, whether such relief could in any case be ordered; but whether the order made could be supported?

Ashurst, J. One's wishes are in favour of the order; but I doubt whether we are not bound by the act. A parent is obliged to maintain her family in the first instance; if she becomes unable, she may receive relief: but if she do, and the family at the time were living under the roof and protection of the mother, the relief must be taken as extended to them all; and every poor-house has accommodations for children. If considered otherwise, it would be attended with mischievous consequences. Suppose an idle artificer was to throw all his family upon the parish, and say I'll only earn sufficient for myself: how under the construction insisted upon is this mischief to be prevented? The object of the act was to make an useful and necessary body of men uniformly industrious.

Buller, J. I am not satisfied that we are bound by the act, as it is said to be expounded in the King and *Carlisle*; but think, that the statute in its true construction is confined to such poor persons, for whom the relief is ordered; and therefore that the distinction between that case and the present is well founded. The act professes to be made "for the greater ease of parishes in relief of the poor." Now the very reverse of this must be the case, if a parish is obliged to find accommodation for a numerous family, when an individual only of that family wants relief. The act does not expressly say, that any one, except the individual who wants relief, is bound either to go into the poor-house or to work: and infants of the tender

der years, stated in this case, are not capable of discretion, and consequently not the objects of compulsion either as to their going into the poor-house, or their working, when taken there. That this construction will not be productive of any mischievous consequences or promote idleness amongst artificers and manufacturers; for where the parent is able to maintain his family by his labour, but refuses to do it, he may be compelled to work and be punished as an example.

Lord *Mansfield* had not been present, during the whole of the argument; and the court thinking it a matter of some doubt; and that it was of much public consequence, took time to consider.

Willes, J. now gave the judgment of himself and the two other judges.

We think it unnecessary to give an opinion upon the point made at the bar; because on another ground we are all clear, that the order of sessions must be quashed. That court had no jurisdiction upon this subject, as no appeal lies from an order of maintenance: and the reason is, lest, while the point is litigating, the poor should starve. That, in making orders for the relief of the poor, the St. 3 W. & M. c. 11. s. 11. gives any justice in the parish, or adjoining to it, if none be there, a concurrent jurisdiction with the justices in sessions. [a] The act of 9 G. 1. c. 7. s. 4. makes no alteration in this respect; neither is any appeal given by either statute nor in principle could there be, in any case in which the court of quarter sessions exercise original jurisdiction; as in such case it would be *ab eodem ad eundem*. The case of the King and *Carlisle* therefore does not apply: for, if an appeal lay, such case could never have existed; because the order of sessions, unappealed from, would have been conclusive upon the indictment for not obeying it.

Therefore let the order of sessions be quashed.

1780.

R. v. INHABITANTS OF NORTH SHIELDS.

Friday,
Feb. 11.

[a] Sir *James Burrow* in a very short note of the case of the King v. *Winship* and *Grunwell*, M. 11 G. 3. 1770. vol. 5. fo. 2679. represents the court to have said: "The sessions cannot make such an original order." Mr. *Douglas* in a note upon his report of the present case, fo. 319. has very justly called in question the authenticity of this note. And certainly the court made no such determination. They were clearly of opinion that the indictment was bad upon the face of it; and that it was unnecessary for them to give an opinion whether the sessions had or had not an original jurisdiction. The words of the act are, "By authority under the hand of one justice of peace, residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in their respective quarter sessions."

That no further doubt may remain as to what was there ruled by the court, I have thought proper to give the case at large, King v. *Winship* and *Grunwell*, M. 11 G. 3. 1770.

1780.

Rex v. Winship and Grunwell.

[Michaelmas Term 11 Geo. 3. 1770.]

“ **T** HIS was an indictment against the defendants, for not obeying an order made at the quarter sessions for the county of *Northumberland*.

“ The indictment stated, that at the general quarter sessions, &c. at *Morpeth*, &c. on *Wednesday* the 11th of *January*, in the ninth year, &c. before, &c. It was ordered by the same justices and court there, as follows to wit, “ *Margaret Richlieu* having an allowance of two shillings a week, payable to her out of the township of *Corbridge*, of which, the sum of 6 *l.* 4 *s.* is now in arrear; It is ordered that the same be immediately paid to her; and it is ordered that the said allowance of two shillings a week be continued to be paid by the said township of *Corbridge* to the said *Margaret Richlieu*; the said township of *Corbridge* appearing, and not shewing sufficient cause to the contrary:” as by the said order of court is manifest and appeareth. Of which said order, *Bartbolomew Winship*, late of the township of *Corbridge* in the parish of *Corbridge* in the said county, gentleman, and *William Grunwell*, late of the same place, farmer, overseers of the poor of the township of *Corbridge* aforesaid, afterwards, to wit on the 17th day of *April*, in the year aforesaid, at the township aforesaid, in the parish and county aforesaid, had notice; they the said *Bartbolomew Winship* and *William Grunwell*, their duty in that behalf not regarding, on the said 17th day of *April*, in the year aforesaid, and continually afterwards until the taking of this inquisition, at the town aforesaid, in the parish aforesaid, in the county aforesaid, unlawfully, wilfully, obstinately and contemptuously did refuse to pay to the said *Margaret Richlieu* the said sum of 6 *l.* 4 *s.* so in arrear, and to pay to the said *Margaret Richlieu* the said allowance of two shillings a week, as by the said order they the said *Bartbolomew Winship* and *William Grunwell* were required; although to pay the same they the said *Bartbolomew Winship* and *William Grunwell* have often by the said *Margaret Richlieu* been requested, to wit at the township aforesaid, in the parish and county aforesaid, in contempt, &c.

“ To this, the defendants pleaded “ not guilty.”

“ T

"This indictment was tried at the summer assizes *cor. Perrot*, 1780.
 "B.; when it appeared in evidence—

"That at the general quarter sessions of the peace holden at *R. v. WIN-*
SHIP and
GRUNWELL.
 "Alnwick in and for the said county, on the 7th day of *October*,
 "1767, an order was made in the words following, that is to
 "say—

"*Margaret Richlieu*, widow, *Isabell Cutter*, widow, &c. &c. &c.
 "of the township of *Corbridge*—It appearing to this court, that
 "a regular poor-house is established in the township of *Corbridge*,
 "and that the said several persons had each one month's notice
 "given them "to go into the said poor house;" and that all ar-
 "rears of their respective allowances were paid up to the end of
 "the said month; it is ordered that the said several persons do im-
 "mediately go to and continue in the said poor house, in order to
 "their being maintained and provided for therein: and that if they
 "do refuse to go and continue in the said poor house for the pur-
 "pose aforesaid, that then the allowance to the said several persons
 "from the township do from the expiration of the said one month
 "cease and be no longer payable. Given under the seal of the ses-
 "sions, at the sessions aforesaid.

"That afterwards, to wit at the general quarter sessions of the
 "peace holden at *Morpeth* in and for the said county, on the 11th
 "day of *January* 1769, an order was made in the words following,
 "that is to say—*Margaret Richlieu* having an allowance of two
 "shillings a week, payable to her out of the township of *Corbridge*,
 "of which, the sum of 6*l.* 4*s.* is now in arrear, It is ordered
 "that the same be immediately paid to her: And it is also or-
 "dered that the said allowance of two shillings per week be con-
 "tinued to be paid by the said township of *Corbridge* to the said
 "*Margaret Richlieu*; the said township appearing and not shew-
 "ing sufficient cause to the contrary. Given under the seal of
 "the sessions, at the sessions aforesaid.

"That the defendants were overseers of the poor of the said
 "township of *Corbridge*; and had due notice of the last mentioned
 "order.

"It further appeareth in evidence, that the pauper was a wo-
 "man of ninety two years of age, labouring under great bodily in-
 "firmities.

"That a poor house had been erected at *Corbridge* three years
 "before the order stated in the indictment.

L

"That

1780.

R. v. WIN-
SHIP and
GRUNWELL.

"That the defendants, the overseers, refused to pay the allowance; insisting "that she should go into the work house, according to the order of suspension.

"Whereupon, a verdict was given against the defendants; subject to the opinion of his Majesty's court of King's Bench, "Whether the defendants ought to be convicted, or not."

"James Wallace for the prosecutor :

"Thomas Walker for the defendants."

"Chambers [a] for the prosecutor contended, that the doubt in this case could not arise from any error of process, was it as clear that an indictment lay for disobeying an order of sessions: that consequently it must arise either from the circumstance of the order having been made by those who had no right to make it; or from some defect in the mode of making it. That there are two species of poor: the first, those who are able to work; and such are to be set to work, employed and maintained in the work-house: the second species are those who are impotent, old and unable to work; and such are to be maintained and not sent to the work-house. That the act [b] says, the parish officers shall maintain and employ such as they send to the work-house: consequently, they shall send none to the work-house, but such as they can employ: that this is a distinction founded in nature, and recognized by several acts of parliament; and, if it be a true distinction, the defendants should have paid this poor woman the allowance according to the order; and her refusal to go into the work-house can be no objection.

"That if the allowance can be exacted, then as to the mode of it. That the justices at the quarter sessions have an original jurisdiction in this instance, and not merely an appellate one, by the express words of St. 3 & 4 W. & M.—nor is there any appeal in this case: that at least the other side must shew an appeal, if they deny an original jurisdiction, as it is clear, that they were meant to have cognizance of the matter. Now at the time of making this act, no appeal lay to the sessions, nor did there, except in the case of settlements, till the St. 17 G. 2.

[a] Now Sir Robert.

[b] 2 G. c. 7. s. 4.

"c. 38. f. 4. ; and the court will consider how this question stood at
 "the time the act was made, and not how it may stand now by
 "subsequent regulations: but it has been holden, that the St. 17
 "G. 2. does not extend to give an appeal in this case: and it has
 "been very wisely so holden, for of all cases this is the most im-
 "proper, in which an appeal can lie; for the pauper might be
 "starved, pending the appeal, and before the right could be deter-
 "mined.

1780.
 R. v. WIN-
 SHIP and
 GRUNWELL.

"*Davenport*, for the defendants insisted, that the justices at ses-
 "sions had no original jurisdiction to make any order: or, if they
 "had, that this order being made with reference to another order,
 "that was not set forth in the indictment, the indictment was
 "bad.

"*Chambers* now said, that he could support it as an original or-
 "der for the future payment.

"*Davenport*, I shall then object, that the order itself was bad,
 "as it was not alledged to have been made on oath or upon applica-
 "tion to the quarter sessions.

"Lord Mansfield (stopping *Davenport* who was proceeding to
 "state the merits of the case.)

"The previous question is whether this order, for disobedience
 "of which the defendants are indicted, is a good and legal order
 "upon the face of it.

"The objections to it are strong, and indeed it is impossible to
 "support it. Upon Mr. *Chambers*'s own concession, which he is
 "obliged to make, there is an end of the question. The ses-
 "sions order all arrears of the weekly allowance to be paid: this
 "order has a reference to a former order, which former order is
 "not stated. And, upon the same ground, that this part of the
 "question relating to the arrears is given up, that part of the
 "question relating to the growing payments must also be yielded.

"Taking this as an original order, the objections to it are nu-
 "merous. By 9 G. 2. no justice can order relief for any poor
 "person, until oath be made, that he has applied at some public
 "parish meeting and has been refused, and the overseers are to be
 "summoned to shew cause. His Lordship then recited the pre-
 "amble of the act for the purpose of shewing the mischief and the
 "remedy that was intended. He then observed that the mischief
 "and the remedy were both applicable to all justices, either singly
 "or sitting collectively at the sessions; and, though the act of par-
 "liament only mentions one justice, yet it must be understood of

1780. **R. v. WIN-
SHIP and
GRUNWELL.**

“every number of justices, having cognizance of the matter.
 “This order then, not being stated, or found to have been made
 “upon oath, is clearly bad; and there is no enforcing it, taking
 “it even for granted, that the justices have an original jurisdiction
 “at the sessions. By these provisions in the act, the court are
 “bound whatever opinion they might form upon the principal
 “question meant to be submitted to them, “whether there is
 “any legal authority vested in the magistracy of this country to
 “make an order for the relief of poor persons, *refusing to go into the*
 “*parish poor house.*” The putting of people into the work-
 “house does not impose upon them an obligation to work, if they
 “are not qualified for labour. Every person in the work-house is
 “not obliged to work. Suppose a man is in a fever! Were the
 “master or keeper of the work-house to exact labour from such a
 “person, he would be indictable for it: and I have had several in-
 “dictments of that kind before me. It is of great importance to
 “the system of the poor laws to have this point settled.
 “Mr. Wallace then mentioned a case similar to the present from
 “his own notes. It was an indictment tried *cor. Batburst, J. at Car-*
 “*lisle*, on the summer assizes 1767. The case was, one *Jane Carr*,
 “having been delivered of two bastard children, was with her
 “children taken into the poor-house of the parish of St. Mary in
 “*Carlisle*, and maintained there for a year and an half: when upon
 “an allowance of one shilling a week, she agreed with the parish
 “officers to leave the poor-house and take her children with her,
 “which she did accordingly. After six months they refused to
 “continue the payment, but offered to take her, and her children
 “again into the poor-house. This she refused to submit to; but
 “offered to take care of one child herself, if the parish officers
 “would take care of the other. This not being complied
 “with, she offered to take sixpence a week for the main-
 “tenance of herself and children: but the parish officers
 “persisted in refusing her any relief, unless she came into the
 “poor-house. Upon this she applied to the court of quarter ses-
 “sions for the county of *Cumberland*; where an order was made
 “upon the churchwardens and overseers to pay her one shilling a
 “week towards the maintenance of herself and children until fur-
 “ther order. This order she served upon the defendant, one of
 “the overseers, and demanded payment; which he refused, but
 “offered to take her and her children into the poor-house. R. v.
 “—— overseer of the poor of St. Mary in *Carlisle*.

“*Batburst,*

"*Batburst*, J. thinking it a matter of importance, said, he would mention it to all the judges without any expence to the parties. His report of the opinion of the judges, which he made in the ensuing Michaelmas Term, was in these words: "That they were all of opinion, upon considering the St. of 9 G. 1. that the defendant was justified in refusing the woman her allowance."

"*Lord Mansfield*. I have some remote memory of it; and the inclination of my opinion, on the opening of the question, was according to the case. His Lordship presently added, that the note was certainly authentic: that *Gould*, J. had once holden the contrary, but that the bar might depend upon it, that all the judges of *England*, who had been consulted at *Serjeant's Inn*, were of the opinion stated in the note."

1780.
R. v. WIN-
SHIP and
GRUNWELL.

"*Per Curiam*,

"Judgment for the defendants."

Rex v. Inhabitants of Birmingham.

Saturday,
Feb. 12.

TWO justices remove *Jane Baker* and her three children from the parish of *Bridgnorth*, in the county of *Salop*, to the parish of *Birmingham*, in the county of *Warwick*. The sessions on appeal confirm the order, and state the following case:

Thomas Baker, the pauper *Jane Baker*'s husband, on the 17th of *October*, being unmarried, and having no child, was hired in the parish of *Birmingham*, by *John Jennings*, a wood-screw maker, resident in that parish, for a year, "good earn, good hire," to work for him, and no other master, to make screws at so much a gross; and this was all that passed upon the hiring. That persons are often hired at *Birmingham* under the terms "good earn, good hire;" the meaning of which is, that their pay is to depend upon their work. *Baker* had no wages. He was to have what he got. If he got nothing, he was to have nothing. His master had no business, but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring,

when the servant pleases, but not to work for any other master, gives a settlement; though the servant has absented himself at different times in the course of the year.

The legal import of a contract, the terms of which appear, is a conclusion of law, without regard to the apprehension and understanding of the parties or the country. A hiring for the year to work by the piece, with an implied liberty, from the usage of the place, to be absent,

and,

1780.
 R. v. INHA-
 BITANTS OF
 BIRMING-
 HAM.

and, during the year, sometimes lodged with his master, sometimes in another house in the parish; and when he lodged with his master, he paid him for his diet and lodging. He sometimes absented himself, to drink or play, for a week or fortnight, and never asked his master's leave for such absence. His master on his return, was angry, and checked him; but always received him again. During such absence, he never worked for his master, nor did he, nor could he, for any other person. He took the same liberty of absenting himself, as other persons in the same way. The master had often found fault with him, and asked him to work; which he had refused to do; saying "I won't work, unless you will advance me some money," to which the master said, "it would be worse for him." Masters do usually advance money to persons hired under those terms. *Baker* had said to his master, that he could not compel him to work; and the master, in his absence, had said, that he thought he had no right to compel him. It is generally understood in *Birmingham*, that persons hired to work in shops, under the above terms, may occasionally absent themselves; but cannot work for any other master. Whether the master could or could not prevent *Baker* from absenting himself, or compel him to work did not appear from any facts, but those above stated. He was hired again under the same terms, and perfected his service in the same way.

Wallace, Solicitor General, and *Plumer* shewed cause in support of these orders; and insisted, that no question could possibly arise upon the several absences stated, as the master had always received the pauper again: that therefore no question remained, but upon the terms of the hiring; that under this hiring, he was to serve for a year, and his industry was to be the measure of his wages: that as to the latter branch of it, to what extent he was bound to apply his industry in the service of that master, to whose use it was solely to be confined, might be a circumstance of some importance to the parties, but was idly and impertinently stated in the case: and had no more to do with the general question respecting the settlement, than the amount of his earnings, or the time at which they might become payable: that the entire substance of their contract therefore being no more than that the servant's wages should be proportioned to his industry, and also, that this throughout the year should continue to be the measure between him and his master, it was a compleat hiring, and every way effectual to the purpose of a settlement. That this was all that passed at the time, and by that only could the contract be explained. That the opinion or apprehension of the parties

parties was immaterial; and had been so adjudged in the case of [a] the King v. the Inhabitants of *King's Norton*; that in the case of [b], the King v. the Inhabitants of *Macclesfield*, which would probably be cited on the other side, there was an exception in the very terms of the original contract of one hour in every day and one day in every week: so also in the case of [c] the King v. the Inhabitants of *Buckland Denham*, where the very terms of the contract containing an exception; *i. e.* being to work *Sbearman's hours only*, it was adjudged, as was the former case, not to give a settlement: that this was a most material distinction between the forms of the contract in those cases, and the present; in the terms of which there could be found no such exception: and this being so, that what was then said by Lord *Mansfield* was conclusive upon this question: "But, if the contract be an absolute contract for a year, *the not working on particular days, if it be the custom of the country not to work on those days*, ought not to hinder the gaining of a settlement; because otherwise no such servant could gain a settlement where such a custom is established:" recognizing the doctrine in the case of [d] the King v. the Inhabitants of *St. Agnes*; where the court held, that if the original contract were an absolute contract for a year, and in its terms contained no exception, any mode of service, which the custom of the county should warrant, would give a settlement: and that this was precisely the present case: that if the objection, that the pauper was in some sort *sui juris*, were admitted, the above cases were all ill-considered, and ought not to have existed.

Dunning and *Leycester*, in support of the rule to quash these orders, contended; that the true question was, whether the pauper was in such a state of servitude, as to be under his master's controul? That the objection went not to the mode in which the service was performed, but to the terms, truly understood, under which the servant engaged in his service; not to any *subsequent* licence or dispensation; to any thing in the master's power, to which he might or might not assent; but to an *antecedent original exception*, which threw all power out of his hands, beyond that of preventing the servant from working with another master: that whether there

1780.

R. v. INHABITANTS OF BIRMINGHAM.

[a] Tr. 13 and 14 G. 2. 1740. Burr. Settl. Cases, 152.

[b] E. 31 G. 2. 1758. Burr. Settl. Cases, 458.

[c] H. 12 G. 3. 1772. Burr. Settl. Cases, 694.

[d] Tr. 10 G. 3. 1778. Burr. Settl. Cases, 671.

were

1780.
R. v. INHA-
BITANTS OF
BIRMING-
HAM.

were such exceptions in the contract must be collected from the genuine import of its terms: that those terms were local terms, only to be understood in the sense in which they are generally received; and consequently that whatever opened or illustrated their meaning were circumstances as necessary to be stated, as it is necessary to justice to understand the meaning of parties to a contract at the time at which the contract is made: that in the case of *King's Norton*, the judgment went upon the ground, that the liberty of the servant to absent herself rested only in her own apprehension and understanding: but that here it arises upon the very terms of the contract, as understood in the place, and by all the parties, and as it was explained by their conduct; and that for these reasons it had very properly been stated by the court: that the question therefore was, whether, if the parties had used the interpretation of the terms, instead of the words or terms themselves, this would have been sufficient to have given a settlement? Now the interpretation is, that the servant may absent himself, whenever he pleases; that this was therefore an exception in the contract itself, not of any particular time, but at his option at all times: that in all cases, where a liberty of absence, protected by the custom of the country, has, under a general hiring, been allowed to prevail, the times of absence have been fixed by such custom, and not left, as here, uncertain and arbitrary: that had the agreement here been, as in the case of *Buckland Denham*, to work such hours as screw-makers usually work, the case would not have been near so strong: the obligation would have been of a nature more definite; it would have been regulated by the custom and not dependent upon the servant's will; and might in such case have been consistent, which the present case cannot be, with the maxim respecting settlements laid down by *Wilmot, J.* in the case of [a] the *King v. the Inhabitants of Bishop's Hatfield*, "that it does not turn upon the obligation the master is under; but the obligation the servant is under to serve."

Willes, J. said, there was some nicety in the case and that the court would take time to consider of it. Lord *Mansfield* was absent.

Willes, J. now, on the last day of the term, delivered the judgment of himself and the two other judges, as follows:

[a] H. 31 G. 2. 1758. Burr. Settl. Cases, 439.

If the hiring is sufficient, there is no doubt of the service ; for though the servant was absent at different times, yet he was always received, and served to the end of the year. As to the hiring, the case consists of five points. 1st, the terms of the contract on the hiring itself. 2d, the facts found, extrinsic of the contract, by the quarter sessions, as the consequence of the hiring. 3d, the apprehension of the pauper. 4th, the apprehension of the master. 5th, the general apprehension of people at *Birmingham* on such a hiring. The three last points may at once be laid out of the case : for the cases of the King *v. King's Norton*, *St. Agnes*, and *Buckland Denham*, are solemn decisions, that they cannot vary the contract or alter the construction of it. In the King *v. King's Norton*, it is expressly determined that the pauper's apprehension is immaterial : if so, the master's must be so likewise. Where the particular terms of the contract or hiring do not appear, the apprehension and understanding of the parties may be material, to enable the justices to say what the contract was : but where that contract, which is a fact, is settled and found, the law must pronounce, upon the words of the contract it self, what is the legal import of it, without regard to what the parties or the country *understand* to be the import. A distinction is settled between cases, where there is an express exception in terms in the original hiring ; and an exception made by the custom of the country or nature of the service ; and the last stated circumstances are expressly determined in *St. Agnes* and *Buckland Denham*, not to prevent the party from gaining a settlement. I will next consider what are the facts found by the quarter sessions, extrinsic of the contract, as the consequence of the contract. The pauper had no wages : he was to have what he got ; if he got nothing, he was to have nothing ; and he was to work in his master's shop and do no other work. All this is the consequence of the contract and the natural inference from it. He, who works by the piece, is to have no stipulated wages : if he do no work, there is nothing to compute wages upon : and a man who hires himself to do one sort of work only, is not compellable to do any other work. Whether a servant is to have any wages or none, what those wages are to be, and how computed, is perfectly immaterial on the question of a hiring for a year. So the pauper's not being obliged to do any other work, is no objection to the hiring. In the King *v. St. Agnes*, the hiring was particularly to work at stamps for manufacturing tin ; and the pauper worked at the stamps daily except *Sundays* and *Holidays*, according to the custom of tanners, and he

1780.

R. V. INHABITANTS OF BIRMINGHAM.

M

was

1780. was held to gain a settlement. This brings the case to the question of what were the terms of the original hiring? They are to work for the master for a year, in making screws at so much a gross; and not to work for any other master during that time. This is the whole of the contract; and it seems to me impossible to put any other reasonable construction on it. The words are, "pauper hires himself to work for *John Jennings* for a year, good earn, good hire, to work for him and no other master, to make screws at so much a gross." If a man hire himself to *A.* for a year to work for him, he hires himself to work for him for a year. The different disposition of the words makes no difference in the sense. The time then for which the contract is made is fixed, it is for a year; the rest of the contract relates only to the wages, which the pauper was to receive. The terms "good earn and good hire," are stated to mean nothing more: in truth in this contract they are nugatory: for by the express terms of it the pauper was to have so much a gross for all the screws he made; consequently the more he made, the more money he was to have. But if the court wanted to be informed what is the meaning of those words, the quarter sessions have found that they mean *ibat*, and no more. Therefore whether they are rejected as meaning nothing more than what is expressly stated in the contract besides, or whether that, which is found to be the true sense and meaning of them, be inserted in their place, the contract is still to work for a year, and the *quantum* of the pay shall depend on the *quantum* of the work. Where is the exception in the terms of the original hiring? there is none. The exception arises from what is afterwards stated to be the general understanding in consequence of such hirings: but it is settled, that a custom or general understanding on the subject will not alter the case, provided the original hiring, in the terms of it be for a year. In the *King v. Buckland Denham* the hiring was not for a year; but to work *Shearman's* hours only, and that he should be at his own liberty at all other times: so there was an exception in the original contract, of *Sundays* and other times; which *Aston, J.* takes notice of as distinguishing that case from the case of *St. Agnes*. The contract or hiring in this case in my apprehension is not to be distinguished from that in the case of *King's Norton*. There the pauper hired herself for a year to spin yarn at 18 *d.* per stone, and was to provide herself with victuals and lodging: here the pauper hired himself for a year to make screws at so much a gross: in each case the pauper hired himself for a year: but in neither case was

R. V. INHA-
BIVANTS OF
BIRMING-
HAM.

was he bound, by operation of law on the contract, to serve every day in the year. In the case of *King's Norton*, the woman could not be compelled to spin on a *Sunday*, and yet she gained a settlement: but, if the *Sunday* had been excepted in the original contract, she could not have gained a settlement. The reason and distinction is this: the act of parliament has said, the hiring shall be for a year, *i. e.* for an entire year; and that requisition must therefore be complied with: but, when complied with, it is to be expounded and restrained by the general law of the land, as to the manner in which it is to be executed; and a service on every day but *Sunday*, is in point of law a service for the whole year. It was said by Mr. *Dunning*, that in the case of *King's Norton*, if the woman did not spin, she might be compelled by a justice; so I say here, if the man did not make screws. This in both cases depends upon the terms of the hiring, which I have already endeavoured to shew was a hiring for a year in each case. It was said, this was like the case of a contract not to marry any other person; which is void. But the cases are not at all apposite. To make them like, you must suppose the contract of marriage to be, to marry one and not any other person; and that contract would be good: so here the contract to work for *Jennings* and for no other person, is good and binding. Mr. *Leycester* relied much on what is said in the case of *Macclesfield* and *Buckland Denham*, by *Wilmot*, J. in the first case, and *Aston*, J. in the other: viz. that the servant must be under the controul of his master during the whole year. This general expression, like most others, when used as an universal proposition by itself, tends only to confound and mislead: when applied to the subject matter, it is plain and intelligible. It means only that the contract shall be for the whole year, and that the master by virtue of that contract shall be subject to the general law of the land or particular custom of the place, and, subject to this, shall have a power to compel the servant to work throughout the year: but in the case of *Macclesfield* and *Buckland Denham* there was no one day in the year, during the whole of which the master, by the terms of the contract, could compel the servant to work; and the engagement was for a certain number of hours in each day only. If the expression were to be understood in as general a sense as may be put upon it, a handicraftsman could never gain a settlement at all: for however general the hiring may be, he cannot be compelled to work on a *Sunday* or at unreasonable hours of the night; and consequently in one sense not under the controul of the master through-

1780.

R. W. INHABITANTS OF BIRMINGHAM.

1780.

R. v. INHA-
BITANTS OF
BIRMING-
HAM.

out the whole year. Upon the whole I think there is an express hiring for a year in this case: that whatever from the custom of the country or nature of the service may constitute a sufficient performance of that contract, makes no difference on the question, whether the party gains a settlement. That the principle of the case of *King's Norton* governs the present case: and nice distinctions, even if they could be made, ought not to prevail, especially in a case which probably will affect the settlements of most of the manufacturers in *England*; and which would operate against what has been, for a great many years past, the rule and leaning of this court, viz. to support and not destroy settlements.

Per curiam,

Rule discharged and
orders affirmed.

Easter Term

20 Geo. 3. 1780.

Rex v. Inhabitants of Uttoxeter.

Wednesday,
Apr. 19.

Appointment
of separate
overseers for
the sub-divi-
sions of a pa-
rish cannot be
supported,
unless the fact
is expressly
found, that
the parish
could not
otherwise receive the benefit of the St. 43 Eliz. c. 3.

TWO justices nominated and appointed *John Ward*, *Stephen Wilcox*, *Cooper*, and *Edward Cope*, overseers of the poor of the township of *Uttoxeter*, in the county of *Stafford*; and by another order appointed *James Stubbs*, and *William Ford*, overseers of the poor of the vill of *Creighton* and *Stramshalk*, in the same county: and also by another order appointed *John Finnemore* and *John Goodrich*, overseers of the poor of the township of *Crakemarsh* in the same county. Two justices also appointed ——— and ———, overseers of the poor of the township of *Loxley*, in the same

county.

county. The sessions, on appeal by the inhabitants of the said township of *Uttoxeter*, confirm all these appointments, and state the following case:

That the parish of *Uttoxeter* is five miles in length, and five in breadth, and contains the townships of *Uttoxeter*, *Crakemarsh*, *Creighton*, *Stramshall* and *Loxley*. The town of *Uttoxeter* is a large market town, much burthened with poor. The townships of *Crakemarsh*, *Creighton*, *Stramshall* and *Loxley*, are in general divided into considerable farms. The said townships were and are one entire parish; and did till the year 1730, jointly relieve and maintain the poor in and throughout the parish. It appears by the vestry book of the said parish, that from the year 1643, to the year 1703, overseers have been elected for the said respective townships in the following manner, viz. Two overseers of the poor for the town of *Uttoxeter*; one for *Loxley*; one for *Crakemarsh*, *Creighton*, and *Stramshall*; one for the *Woodlands*. The *Woodlands* is part of the township of *Uttoxeter*. It does not appear from the vestry book, or other evidence, that, from the year 1703 to 1727, any overseers were elected for the said townships, but two overseers were elected for the said parish: and, during that time, churchwardens were elected for the said parish, and sidersmen for the said townships. On the 10th of *November*, 1730, in pursuance of a *mandamus* from the court of King's Bench, an assessment for the relief and maintenance of the poor of the said parish of *Uttoxeter*, upon all the inhabitants and occupiers of land within the said parish, was duly signed by two justices of the peace. In Trinity Term, in the 5th and 6th years of the reign of King George the 2d, and in the year, 1731, a *mandamus* issued from the court of King's Bench to the justices of the county of *Stafford*, reciting, that there were divers householders within the said parish of *Uttoxeter*, able to contribute to the relief of the poor of the said parish, and that there were no overseers of the poor of the said parish appointed to make rates on all and every the inhabitants and occupiers of lands, houses, and other things rateable within the said parish, for the relief of the poor of the said parish; and ordering the said justices to appoint two or more overseers of the poor for the said parish of *Uttoxeter*. In pursuance of the said *mandamus*, on the 30th day of *July* following, two justices of the peace for the county of *Stafford*, appointed two overseers of the poor for the said parish of *Uttoxeter*. At the general quarter sessions for the county of *Stafford*, held on the 5th day of *October*, in the 6th year of the reign of King George the 2d,

1780.

R. v. INHABITANTS OF
UTTOKETER.

1780.

R. V. INHA-
BITANTS OF
UTTOXE-
TER.

and in the year 1731, the inhabitants of the vills of *Crakemarsh*, *Creighton*, and *Stramshall*, appealed against an assessment, made on the 12th day of *August* preceding, for the maintenance of the poor of the parish of *Uttoxeter*, and on full hearing of counsel, and consideration of the evidence given as well for the said vills as for the township of *Uttoxeter*, the court was of opinion, that the inhabitants of the said vills of *Crakemarsh*, *Creighton*, and *Stramshall*, (for which vills overseers of the poor were duly and in due time appointed, and poors rates duly made and allowed, before the making of the said assessment or rate appealed against) ought, to maintain and accordingly did order that they should maintain, their own poor, distinctly and separately from the other parts of the said parish of *Uttoxeter*; and the court did further order that such part of the said assessment or rate appealed against, as charged the inhabitants of the said vills of *Crakemarsh*, *Creighton*, and *Stramshall*, for or towards the maintenance of the poor of the said parish of *Uttoxeter*, in respect of what they hold or occupy within the said vills, should be quashed and discharged; and the same was accordingly by the court quashed and discharged. The said order, in Michaelmas Term following was removed by *certiorari* into the court of King's Bench, and the court of King's Bench in Michaelmas Term, in the 6th year of the reign of King George the 2d, ordered, that the order of sessions, as to such part of it as orders that the inhabitants of the vills of *Crakemarsh*, *Creighton* and *Stramshall*, in the parish of *Uttoxeter*, shall maintain their own poor distinctly and separately from the other part of the said parish of *Uttoxeter*, be quashed for the insufficiency thereof: and as to the other part of the said order, for the quashing and discharging such part of a certain assessment or rate made for the maintenance of the poor of the said parish of *Uttoxeter*, as charges the inhabitants of the said vills of *Crakemarsh*, *Creighton*, and *Stramshall*, towards the maintenance of the poor of the said parish of *Uttoxeter*, in respect of what they hold within the said vills, be affirmed. In Michaelmas Term, in the 7th year of the reign of King George the 2d, and in the year 1733, a *mandamus* issued from the court of King's Bench, to the justices of the county of *Stafford*, reciting that there were divers householders within the said parish of *Uttoxeter* able to contribute to the relief of the poor of the said parish; and that there were no overseers of the poor of the said parish, appointed to make rates on all and every the inhabitants and occupiers of lands, houses, and other things rateable within the said parish for the relief of the poor of the said parish; and

and ordering the said justices to appoint two or more overseers of the poor for the said parish of *Uttoxeter*. On the 15th day of *April* in the year 1734, two overseers were appointed for the vill of *Crakemarsh*, two other overseers for the vill of *Craigton*, two other overseers for the vill of *Stramshall*, two other overseers for the township of *Uttoxeter*, and two other overseers for the vill of *Loxley*, by five separate appointments; each appointment signed by the same two justices of the peace for the county of *Stafford*. On the 27th day of *May* following, a *certiorari* issued to remove the said five appointments into the court of King's Bench, which were accordingly removed; and on *Saturday* next after the morrow of the Holy Trinity, in the said year 1734, the said five appointments were affirmed by the court of King's Bench. Since the year 1734, overseers have been separately appointed for each of the said townships, and the poor of the said townships have been separately maintained.

1780.
R. v. INHABITANTS OF
UTTOXETER.

Wallace, Solicitor General, *Dunning*, and *Leycester*, shewed cause in support of these appointments; and contended, that it was not necessary to shew by argument, that there was an inability in this parish to receive the benefit of St. 43 Eliz. c. 2.; as it was stated, as it appeared from the case itself, that they had not received the benefit of it: that, though by that act no more than four overseers could have been appointed, yet from the year 1643 to 1703, there never were less than five appointed in this parish; and that as twenty years of this period were antecedent to the St. 13 & 14 Car. 2. it was evident from this irregularity at that time, that they could not have the benefit of the act of Eliz.; and that this was therefore probably one of the many cases, that produced the act of Car. 2.: that the court would also see strong reasons, before they were induced to interpose and overturn a practice that had prevailed ever since the year 1734, especially when fortified by such an usage as is stated before the act of Car. 2.

Buller, J. But should not the case have expressly found, that the parish *could* not receive the benefit of the St. of Eliz.?

Dunning. If that fact is to be collected from the circumstances stated, if it arises by inference from the finding, it need not be directly and in terms expressed: that it was a maxim to presume every thing in favour of *orders*, though as to convictions, the rule was otherwise: that in these last, unless enough was stated to prove them right, the court takes them to be wrong; but that in orders, unless enough is stated to prove them wrong, the court will presume that they are right: that, from all the facts stated, the clear result in the minds of the justices must have been, that this parish could not have the benefit of the one statute without the aid of the other:

1780.
R. v. INHABITANTS OF
UTTOXETER.

other: it may be said indeed here, that the districts of the parish are not now as they were antiently; but still the only question is; if they are altogether of such a nature and extent, as proves their inability unassisted, of reaping the benefit of the St. 43 Eliz.; and then, as trade and population fluctuate, the discretion of the magistrate is to vary their limits. That the case of [a] the King v. the justices of *Middlesex*, and of [b] *Peart* and another v. *Westgarth* and another, which would be relied upon on the other side, were totally different from the present: that in the first, the appointment of overseers and also the rate had been uniformly joint, and for the whole parish, down to the very time of the question being moved; and in the other, down to the year 1723: that it was evident therefore, that these parishes must have had the benefit of St. 43 Eliz.: that there was no argument to oppose to this in the first case; and only a modern practice in the last: but that the present case came within the very terms of the resolution in the King v. the justices of *Middlesex*; which were, that the St. 13 & 14 Car. 2. applied only to parishes, in which, *at the time of passing that act*, the benefit of St. 43 Eliz. could not be had: which was, upon the fact found, evidently the case of the parish of *Uttoxeter*. That the *mandamus* of 1733 had probably not been opposed: that no return to it is stated: and that on the contrary soon afterwards four separate appointments appear to have been made and confirmed in this court. That the determination of this very case, as stated in 1731, was decisive; [c] as that part of the order of sessions, which quashed the assessment of the *vills* for the maintenance of the poor of the parish, was affirmed: and, though it was also true, that that part of the order, which directed, that the *vills* should maintain their poor distinctly and separately from the *parish*, was quashed, yet that the court in doing this went upon a mere defect of form in the order, it not appearing from thence whether the sessions intended to appoint overseers over the *three vills jointly*, or over *each* separately: and that it had been the strong inclination of one of the court, Lee, J. [d] to have affirmed the order generally.

[a] Tr. 27 and 28 G. 2. Bott. 17.

[b] H. 5 G. 3. 1765. 3 Burr. 1610.

[c] M. 6 G. 3. 1732. 2 Barnardist. 198.

[d] Tr. 5 G. 2. 1732. 2 Barnardist. 170. v. 1 Seff. Cas. 163. S. C.

Bearcroft in support of the rule to quash these appointments insisted; that the case of *Peart v. Westgarth* concluded upon the question; it having been there adjudged, that, unless inability to receive the benefit of the St. 43 Eliz. is expressly stated, the court will take it to be otherwise: that there, in the parish of *Stanhope*, it was also in itself much more probable, that they could not have the benefit of the act; the extent of that parish being 20 miles in length and 8 in breadth, and this only 5 in each; and there the court disregarded a custom of forty years. That as to the separate appointment confirmed by this court in 1734, the question was never before the court; for upon searching the office it appears that the order was filed the day after the *certiorari* was moved, and that no adverse proceedings were had.

Lord *Mansfield*, without hearing the other counsel,

The case of *Peart* and *Westgarth* decides the question. The inability to receive the benefit of the act must appear. In this case, though there were separate overseers from 1643 to 1703, yet all the townships during that period jointly relieved the poor: and the case cited shews, that an acquiescence for forty years will not alter the law. The confirmation of the separate appointments in 1734 is also shewn to be no authority: the question does not appear to have been raised: but *Peart v. Westgarth* is a direct authority; and the point was then very well considered: and there the court thought, that the policy of the St. in the time of *Car. 2.* was a mistaken one; [a] that it proceeded upon a wrong principle, and that it was much better, for the purpose of maintaining the poor, to enlarge the districts than to narrow them.

Aston, Willes and *Ashburst*, Justices, concurring,

Rule absolute and Order of sessions, confirming these appointments, quashed.

[a] And yet a similar policy seems to have guided the deliberations of the court at that time in construing this act, with respect to its generality and extent; for it was not adjudged till 1712. H. 11 Ann. that it included other counties than those enumerated. *Dolting v. Stockland* in com. *Somerset. Foley* 98. *Fortescue*. 219. 2 *Salk*. 486. in marg. S. C. Indeed *Hale* Ch. J. was strongly inclined to a different opinion, as the books are agreed; though this, as appears from *Freem.* 412. was not made a part of the judgment of the court, as it is stated to have been in 2 *Lev.* 142. S. C. *Skillington v. Norton*, Tr. 27 *Car. 2.* But the true principle of the judgment, as appears from *Freem.*, was precisely that laid down by the court in the present case; "that, though it was found to be a large parish, yet it was not found to be so big that, by reason of the largeness thereof, they could not reap the benefit of the act of 43 Eliz. according to the words of the statute.

And so late as in Tr. 13 G. 3. 1773. the principle of this case, together with the authority of that of *Peart v. Westgarth*, were recognized in the case of

1780.

R. v. INHABITANTS OF
UTTOXETER.

1780.

Rex v. Inhabitants of Beeding, otherwise Seal.

“ **T**HE sessions for the county of *Sussex*, upon the appeal of
 “ *George Boughey*, Esq; quash a rate duly allowed for the
 “ relief of the poor of the said parish, and state the following case :
 “ That the parish of *Beeding*, otherwise *Seal*, is a large and ex-
 “ tensive parish, part of which said parish is called the tything of
 “ *Bewbush* : and that the said tything is 20 miles from the church
 “ of the said parish of *Beeding* otherwise *Seal*, and that it *cannot*
 “ *reap the benefit of the act* of parliament of *the 43d of Eliz. with-*
 “ *out inconvenience* : and that the said tything was rated generally to
 “ the poor of the said parish of *Beeding* otherwise *Seal*, at large and
 “ not as a separate tything, till the year 1758 ; when upon the ap-
 “ peal of *Francis Smart*, gent. an order of sessions was made in the
 “ words following : “ It is ordered by this court, all parties con-
 “ senting, that the said poor rate be quashed, as to the inhabitants
 “ of the tything of *Bewbush*, within the said parish ; the said ap-
 “ pellant *Francis Smart*, hereby undertaking, to pay the church-
 “ wardens and overseers of the poor of the other part of the said
 “ parish of *Beeding* otherwise *Seal*, all charges and expences they
 “ have been at in regard to the maintenance and other expences of the
 “ poor of the said tything of *Bewbush*, after a deduction of what the
 “ overseers of the poor of the said parish have received from any
 “ of the inhabitants of the said tything of *Bewbush*, since *Easter*
 “ last ; and also to enter into a bond in a penalty of 200 *l.* to the
 “ said inhabitants of *Beeding* to save harmless and keep indemnified
 “ from time to time, and at all times hereafter, the parishioners
 “ and other inhabitants of the said parish of *Beeding* (except the
 “ said tything) from all charges and expences, that may happen to
 “ them in regard to the poor of that part of the said parish of
 “ *Beeding*, called the tything of *Bewbush* ; they the said parish-
 “ ioners and inhabitants of the said parish of *Beeding* undertaking,
 “ not to rate or tax the said part of the said parish of *Beeding*, called
 “ *Bewbush*, towards the relief of the poor of the other part of the
 “ said parish at any time or times hereafter ; and that different of-
 “ ficers shall or may hereafter be appointed for the said tything of
 “ *Bewbush*.”

“ That from that time the said tything of *Bewbush* has never
 “ been rated to the parish of *Beeding* generally, but have separately
 “ maintained their own poor : but it did not appear, whether there
 “ had

“ had been any overseer appointed or any poor-rate made for the
 “ said tything before the year 1772 or not; when the lands lying
 “ in the said tything were included in a rate made by the said pa-
 “ rish of *Beeding*: and it not appearing unto us, whether the
 “ bond, mentioned in the said recited order of sessions was ever
 “ entered into or not, it is ordered, that the said rate be quashed
 “ as to the said tything.

1780.

R. V. INHA-
 BITANTS OF
 BEEDING
 OTHERWISE
 SEAL.

“ *Dunning* and *Burrell* shewed cause in support of this order of
 “ sessions; insisting, that this case had found precisely that, which,
 “ from the report in 2 *Lev.* 142., seems to have been the only re-
 “ quisite to success upon that special verdict: viz. “ that the pa-
 “ rish is *so large*, that distribution parochial cannot *well* be made.”
 “ that indeed, without an express finding, the situation of this
 “ place, a little insulated tything at the distance of 20 miles from
 “ the parish, of itself evidenced the inconvenience, and pointed out
 “ the necessity, of its being aided: that the burthen upon parish
 “ officers, who execute their offices without any recompence for
 “ their trouble, was otherwise grievous and intolerable: that the
 “ phrase of “ reaping the benefit of St. 43 Eliz.” in the St. of
 “ Car 2., must mean a full and perfect benefit; for that there
 “ was scarce any district so large as to be incapable of being in
 “ some degree benefited by it: and that here a full and perfect be-
 “ nefit was stated not to be in their power: but that in *Peart* and
 “ *Westgarth* it appeared always to have been in their power, and for
 “ a long period actually enjoyed. As to the other objection, that
 “ a *tything* does not fall within the description of the act, it was a
 “ word of an import much less vague than *division*, the term used
 “ in the case of the King v. the Inhabitants of St. Giles’s in the
 “ *Fields*; that it had a known, definite legal, import, consisting of
 “ *ten* families with a proper officer, when only *three* constituted a
 “ *vill*, which was the very phrase of the act.

“ *Bearcroft*, in support of the rule to quash this order, insisted,
 “ that the agreement of 1758, could not be considered as a legal
 “ division of the parish; that it was not the act of the sessions, but
 “ a mere matter of accommodation and compromise between the
 “ tything and parish; which could at most be no further obli-
 “ gatory than with respect to the specific matter, then the subject
 “ of controversy: that the only legal way of executing the powers
 “ given by St. 13 & 14. Car. 2. was for two justices to appoint
 “ overseers for this division separately: that unless at the time of
 “ making the rate, a legal separation existed, the rate was regular:
 “ that there was not a single circumstance here to shew inability

1780.
 R. v. INHABITANTS OF
 BEEDING
 otherwise
 SEAL.

“ and therefore *Peart* and *Westgarth* was in point: that the ob-
 “ ject of the treaty had been the private purposes of an individual,
 “ whose property the tything almost altogether was, without
 “ the least regard to the public: for, had public convenience
 “ dictated the measure, it would have been adopted years ago as
 “ well as settled then in a very different mode.

“ Lord *Mansfield*.

“ Without going into the doctrine upon the construction of St.
 “ 13 & 14 Car. 2., which is laid down in *Peart* and *Westgarth*,
 “ there was no pretence for quashing this rate. The order of the
 “ sessions is every way wrong. The rate for the whole division
 “ could only have been quashed; for it was by agreement only,
 “ that this separate division could exist, as such; and that agree-
 “ ment has necessarily been abandoned in argument, as never
 “ having been carried into execution. The rate therefore at the
 “ time it was made does not appear to be open to any exception:
 “ and the true legal way of raising the question is by appointing
 “ overseers.

“ *Aston*, J. Whatever may be the policy of the act, it must appear
 “ clearly, 1. that the place is so large as not to be able to receive
 “ the benefit of St. 43 Eliz.; 2. that regular officers have been ap-
 “ pointed; and 3. that proper levies have been made: but there
 “ is nothing here, but an unexecuted private agreement; the not
 “ enforcing of which is probably an inconvenience, felt by an in-
 “ terested individual, but not affecting the parish or the public.

“ *Willes* and *Ashburst*, justices, concurring,

“ Rule absolute,
 “ Order of sessions quashed and
 “ rate affirmed.”

1780.

Rex v. Butler & al.

Wednesday,
May 3.

TWO justices allow a rate of one penny in the pound for the relief of the poor of the parish of *Swannage*, otherwise *Sandwich*, in the isle of *Purbeck*, in the county of *Dorset*.

Upon the appeal of *George Clarke Butler* and others, against this rate, their notice amongst other causes, set forth, that no difference or distinction is made in assessing tenements and farms consisting of land or ground, and cottages or dwelling-houses, the latter being rated *on a par* with the former, at one penny in the pound. Whereas tenements or farms ought to have been rated and assessed at one penny, and cottages or dwelling-houses at three farthings in the pound; because the clear income or produce of the latter in general as to the former, is at and after that rate. The sessions confirm this rate, and state the following case:

That it was proved by one witness, that before the year 1752, the occupiers of land were rated generally at about *three farthings*; the occupiers of houses, at *one half-penny* in the pound, of the annual rent, but variable, from 1752, to 1777; the land was rated at *a half-penny half-farthing* generally, the houses at *a half-penny*; that at a vestry 1777, called for the purpose of settling the rate, the lands were rated at *one penny* and the houses at *three farthings*; that, at a public vestry in 1778, both lands and houses were rated at *one penny* in the pound on the annual rent; and at a public vestry in 1779, the same way of rating, as in 1778, was continued.

Rooke, being called upon in support of the rule to quash the order of sessions, contended; that the practice, which had immemorially prevailed in the parish of making a difference between land and buildings, in favour of the latter, was clearly founded in good sense and justice: that the articles of repairs, window-tax, &c. necessarily and universally reduced the rent of houses; but that land was not subject to such, or any other equivalent, deductions from the amount of its produce; and that in the case of [a] the King v. *Brograve* the propriety of a regulation, which adopted this distinction, was strongly recognized: and particularly by *Rates*, J. [b]

Inequality
must appear
plainly upon
the face of a
poors rate, or
the court will
not quash it.

[a] M. 10 G. 3. 1770. 4. Burr. 2491.

[b] Bott. 31.

1780. Lord Mansfield.

R. v. BUT-
LER & al.

The question before the court is, does the rate, upon the face of it, appear to be equal or unequal? unless it is manifestly unequal, the court will presume it equal. Circumstances may vary the value of different estates: and if this plainly appear, then what is said in the *King v. Brograve* applies: but you take advantage of an *obiter* saying of the court in that case, when the true legal ground of the authority is decisive against you.

Willes, Ashurst, and Buller, justices, concurring,

Rule discharged and the Order of sessions,
confirming the rate, affirmed.

Vide R. v. Inhabitants of Sandwich, otherwise Swannage. H. 21 G. 3. 1781. post.

Wednesday,
May, 3.

Rex. v. Inhabitants of Winchcombe.

Under a hiring for not less than a year, if there be no other discontinuance of the service than such as the laws compels, whatever may have been further stipulated between the parties, a settlement is gained.

TWO justices remove *Daniel Hone* from the parish of *Winchcombe*, in the county of *Gloucester* to the parish of *Chipping Norton*, in the county of *Oxford*. The sessions on appeal quash the order, and state the following case:

That the pauper *Daniel Hone*, hired himself five weeks before Michaelmas 1773, for a year to *Robert Rawlings*, of *Chipping Norton*, in the county of *Oxford*.—And that, at the time of his being so hired, it was agreed between the said pauper and the said *Robert Rawlings*, that the pauper's wages should be paid to him weekly at eight shillings per week. And that he the pauper, being a balloted man in the North battalion of the *Gloucestershire* militia, should be absent for the month, and in lieu of that month he would serve his master another month at the end of the year. That he was accordingly absent thirty days in the North battalion of the *Gloucestershire* militia, and then returned to his said service, but continued only three weeks of that month, which was so agreed to be served in lieu of the month he was absent in the North battalion of the *Gloucestershire* militia; and left his said master a fortnight before Michaelmas. And the pauper expressly swore that he did not serve his said master the year by one week.

Bearcroft and *Clyfford* shewed cause in support of the order of sessions; and insisted, that there was here neither a hiring or a service

vice for a year : that as to the hiring, there was an express exception in the contract of a month ; that the pauper's agreement after the interval of that month to come again and make up the year, might entitle him to his stipulated wages, but could not give a settlement, any more than making up the year after the exception of the harvest month ; as was the case of [a] the King v. the Inhabitants of *Bishop's Hatfield* : that such broken services under such a pre-contract had never been united to give a settlement : that the reservation of the month here was under circumstances different from those in the case of [b] the King v. the Inhabitants of *Westerleigh* ; for that the exception there was contingent only, " if the militia were called out ;" an event, which might not have happened ; but that here the event was certain, - as the militia were actually embodied : that the terms of the exception were also in that case conditional only, " that he *might* be absent ;" but that here they were absolute and positive, " that he *should* be absent."

That, as to the service, this man was no more than a weekly servant at eight shillings a week : that he had so construed the contract himself by dividing the last month in that manner ; for no permission or consent was stated for that division ; and he was therefore probably so paid, if paid at all. That the service was also actually short of a year by one week : that in the case of [c] the King v. the Inhabitants of *Castlechurch*, though the whole year's wages were paid, and the master consented to the servants leaving him, yet the absence of twelve days at the end of the year was holden fatal, and that it ought not with respect to the settlement to be considered as a dispensation : but here, where, as far as appeared, no wages were paid, and it was the voluntary, unauthorized, act of the servant, such an act, without any equitable circumstances to aid it, fell directly within the letter of that law ; [d] which, Lord *Hardwicke* in the last cited case, had said, is not to be extended by construction."

Dunning and *Pool* in support of the rule to quash this order and establish the order of the two justices, insisted ; that the case of *Westerleigh* was in point ; and that, under that authority, if the whole additional month's service had been wanting, a settlement would still have been gained : that the law never meant to place those, who were occasionally called out to defend their country, in a worse situation than those who were left at home ; and there-

1780.

R. v. INHABITANTS OF WINCHCOMBE.

[a] H. 31 G. 2. 1758. Burr. Settl. Cases, 439.
 [b] M. 14 G. 3. 1774. Burr. Settl. Cases, 753.
 [c] M. 9 G. 2. 1735. Burr. Settl. Cases, 68.
 [d] 8 & 9 W. 3. c. 30.

1780.
 R. v. INHA-
 BITANTS OF
 WINCH-
 COMBE.

fore that the service of the three weeks, at the end of the year was merely surplusage: that, if the stipulation were absolute here, and conditional only in the case of *Westerleigh*, the purposes for which both stipulations were made, were precisely the same: that the precautions taken by the parties were superfluous, but that the law could not in this case depend upon their acts and stipulations: that consequently there could be no difference whether a compensation was made by the master for this month; and that the absence, not complained of by the parties, was no more than a dispensation.

Lord *Mansfield* recognized the case of *Westerleigh*: and said he had no doubt, if a man is hired for a year, and is during that year chosen by ballot, and serves his month, in the militia, but that he gains a settlement. The difficulty, he said, was, whether under the terms of this agreement, the additional month was to be considered as part of the year? for that, if so, the service was not compleat. He thought there was some nicety in it, and said the court would think of it.

Lord *Mansfield* now delivered the judgment of the court.

Friday,
 May 5.

Here is a hiring for a year, and also a service for a year, if it be not interrupted by the servant's absence during his month in the militia. A hiring and service must run in a continued course for a year; must not be broken and compounded of different periods, but must proceed regularly in computation from the time of the agreement entered into. Here there certainly was an absence for a month; but the agreement on the part of the master, to permit this absence was an agreement only to that, which, otherwise, and without his consent, would have been implied: his consent he could not withhold; for the servant by the law of the land is obliged to go from his service at that time; and his serving the month afterwards was only a compensation for this absence, and is the same as if he had submitted to a proportional abatement of wages: [a] but this could not break in upon the service for a year: for that was compleat before the 13th month began. We think this very like, though not exactly the case of *Westerleigh*; that we ought to lean in favour of settlements; and that it might prove a very extensive mischief, if we were to determine, that a man might lose the means of gaining a settlement by serving in the militia.

Rule absolute. Order of sessions quashed,
 and Order of two justices affirmed.

Vide the case of the King v. the Inhabitants of *Syderstone*, cum *Bermer*. E. 17 G. 3. 1777.
Ante, 19.

[a] *Vide* the state of the case in the King v. *Westerleigh*.

Trinity

Trinity Term

20 Geo. 3. 1780.

Rex. v. Inhabitants of Frampton upon Severne.

Wednesday
May 31.

TWO justices remove *Elizabeth*, the wife of *Samuel Minett*, and their child, from the parish of *Frampton upon Severne*, in the county of *Gloucester*, to the parish of *Fretterne*, in the same county. The sessions on appeal quash the order, and state the following case:

That in the year 1751, *Fretterne* parish granted a certificate to the parish of *Frampton upon Severne*, thereby owning *Job Minett*, and *Ann* his wife, to be settled in *Fretterne*; under which certificate *Minett* and wife lived in *Frampton upon Severne* till the latter end of the year 1753, or the beginning of the year 1754; when *Job* and his wife voluntarily returned to and lived in *Fretterne*, his place of settlement, and had afterwards a son, named *Samuel*, born in *Fretterne*, in 1754. The father continued to live in *Fretterne* for 17 or 18 years; when having a relation in *Frampton upon Severne* dead, the father went by himself, the wife being dead, to *Frampton upon Severne*, to take to and to possess himself of the effects, and there remained for about six months: when, being taken ill, he was by the parish of *Fretterne* recommended to *Gloucester* infirmary, and there died. But before the father went to *Frampton upon Severne* to take to his relation's effects, *Samuel*, the son, was hired for a year to *Robert Very*, in *Frampton upon Severne*, and lived with him for two or three years. On going out of *Very*'s service *Samuel* was hired again in *Frampton upon Severne*, to *Richard Clutterbuck*, Esq; and lived there for two or three years, and till after

In deciding whether a certificate is abandoned, the court will regard the intention of the parties, together with the other circumstances. What particular length of time amounts to an abandonment is not determined.

1780. his father died. *Samuel*, the son, afterwards married *Elizabeth*, his wife, and had by her one child, the pauper.

R. v. INHA-
BITANTS OF
FRAMPTON
upon
SEVERNE.

Dunning shewed cause in support of the order of sessions; and insisted, that at the time of the first hiring of *Samuel*, the son, the certificate was not in point of law subsisting: that there were various modes, by which a certificate might be discharged: that a removal was undoubtedly one: that it might also by a waiver or desertion: as in the case of [a] the King v. the Inhabitants of *Fauntou St. Mary Magdalen*.

Lord *Mansfield*, calling upon the other side,

Heworth and *Clyfford*, in support of the rule to quash the order of sessions, insisted; that the only question was, whether, as to the operation of a certificate in point of time, there was any statute of limitations, or rule of law analogous thereto? that there was only one case, the case cited, in which any thing like that doctrine had been even hinted at: that it was no more than hinted at: that its authority did not stand on principle, and that it was a resolution, when the court was not full; and did not by any means rest on that point singly, but upon a variety and combination of circumstances: that the authority of this case had also been considerably shaken by a subsequent determination, that of [b] the King v. the Inhabitants of *Spotland*; which proved that a voluntary removal merely would not affect a certificate; which could only be avoided by the several modes pointed out in the act, [c] or by such determinations as were the clear and undoubted construction of it: that therefore, unless there were some act, that amounted to a discharge, or an abandonment of the certificate, no length of time or succession of generations could, of themselves, avoid it: that a certificate, which had been adjudged to be a solemn acknowledgment like the conuizance of a fine, when left with a parish, is a statutable protection against any settlement to be gained there: that a pauper cannot say, he will desert it: that in common justice he ought not to be permitted to say so: unless he could, by so saying, release the parish, to which he is certified, from every obligation to which the certificate subjects them: that on the contrary the pauper, who, has,

[a] Tr. 29 & 30 G. 2. 1756. Burr. Settl. Cases, 402.

[b] 5 G. 3. 1765. Burr. Settl. Cases, 527.

[c] 9 & 10 W. 3. c. 11.

or by birth derives, a claim under it, may return whenever he shall please, the parish cannot refuse to receive him, nor can they, unless he becomes chargeable, remove him: that the construction contended for would deprive them of the advantage intended by the act, and expose them to numerous mischiefs: that, from their ideas of security on this subject, that caution, which was invariably used with respect to all other poor, was never interposed in the case of poor of this description; and that, even if they were not entrapped, not knowing under the many and intricate circumstances that attend questions of abandonment, what legal niceties might prevail, some might be deterred by the peril of costs, from asserting their rights, and removing a certificated pauper: that the present line was a plain and intelligible one, without refinement, and level to common understanding; but that if nice distinctions were introduced, with those who were contentious and disposed to oppress, it would prove an eternal source of litigation. Is the period of absence, that denominates it an abandonment, to be five or fifty years? Or what intermediate space? Shall this be accomplished by living in a neighbouring parish and renting a patch of garden ground for the subsistence of a family, or by engaging there in a farm or manufactory? And in what course of time can this be effected? Shall the consequences of residence in another parish, depend upon its having happened upon a visit or under the avocations of business? Upon which; and how long necessarily upon either? That not only there could be no end to these inquiries, and that to pursue the statute was the only safe guide; but that there could be no reasonable cause of complaint, no *gravamen*, on the other side; as no parish was compellable to grant a certificate. That in this particular case it was a strong circumstance, that the other parish understood themselves under an obligation to provide for the pauper; and had, in the character of their parishioner recommended him to the infirmary.

Lord Mansfield.

The principle has been long settled of abandonment by disuse: at least it is to be found in the case of *Taunton St. Mary Magadlen*; and the circumstances of this case seem to me to be stronger than those in the *Taunton* case. Here the grand-father has a certificate, which in two years he deserts, and goes to his own parish; has a son there, and does not return to *Frampton*, the certificated parish, till seventeen years after, and then on special business. Before he so returned, the son is hired and serves a year in *Frampton*. The

1780.

R. W. INHABITANTS OF FRAMPTON upon SEVERNE.

1780. *question then is, whether the son went to Frampton under the faith of the certificate? Certainly not. Frampton had never heard of him: he goes there as an emancipated son in his own right, and acquires a settlement by service. It shall not be said, that he came under a certificate, abandoned by his father before he was born: and quo animo the pauper returns to the certificated parish must always be considered. It is material too, that in the Taunton case the court doubted, and did not determine the extent of the word "Family" in the act, and whether it comprehended grand-children.*

R. V. INHABITANTS OF
FRAMPTON
UPON
SEVERN.

Buller, J. It don't appear, that the court in the case of *Spotland* meant to overturn that of *Taunton*. A mere going away indeed shall not avoid a certificate: but what absence shall have that effect is by those cases left open and unascertained.

Willes, and Ashurst, justices, concurring,

Rule discharged and
Order of Sessions confirmed.

Monday,
June 12.

Rex v. Inhabitants of Harwood.

For the purpose of a settlement, no law or custom will give validity to a hiring, which apparently, and in the very terms of it, is short of a year.

TWO justices remove *Joseph Brown, Abigail* his wife, and their child from the township of *Leeds*, in the borough of *Leeds*, in the *West Riding* of the county of *York*, to the township of *Harwood*, in the same riding and county. The sessions on appeal confirm the order, and state the following case:

That the pauper, *Joseph Brown*, the husband, in the year 1774, being then a single man, and an inhabitant, as a servant in husbandry at *Harwood*, wanting again to hire himself as a servant in husbandry, offered himself at the *Statutes Fair*, at *Harwood* aforesaid, where there is a custom for servants to hire at the *Statutes* day, on the last *Monday* in *October*: but, not meeting with a master there, he went to the market-town of *Otley*, (about eight miles distant from *Harwood*,) where there is a different custom for servants to hire by the year, at two different *Statutes*; one held on the *Friday* before old *Martinmas-day*, the other on the *Friday* next after old *Martinmas-day*; at which latter *Statutes Fair* they always hire till the

the old *Martinmas-day* following, which by the custom is considered as a hiring for a year. That old *Martinmas-day* in the year 1774. was on the *Tuesday*. That on the *Friday* following, being the second *Statutes Fair* above-mentioned, the pauper hired with *William Pike*, to serve his mother, *Ann Firth*, in *Harwood*, till the old *Martinmas-day* following; and that he did serve her in *Harwood* till the old *Martinmas-day* following.

1780.

R. v. INHABITANTS OF HARWOOD.

Dunning shewed cause in support of these orders: and said, as there could be no doubt, but that, if the pauper had been hired under the other custom of this place, he must have gained a settlement, it would be absurd and unjust, the principle not being new, and the case equally *bona fide*, to say that he had not gained one here and under this; that if settlements were to be favoured, and the spirit of a contract, affecting that very right, made by a numerous class of poor people acting without advice, had been under other circumstances permitted to prevail against the letter of the law, "there could be no reason that it should not in the present case: that from the day next after Michaelmas-day, till Michaelmas-day," which was the case of [a] the King v. the Inhabitants of *Navestock*, neither in terms or in strict legal construction comprised the period of a year, entire and complete; and that this case was equally protected by the custom of the country: that, in the case of [b] the King v. the Inhabitants of *Newstead*, a hiring from *Whitsuntide* to *Whitsuntide* had been holden sufficient; and that "duration for 365 days is not the criterion of a good hiring."

Fearnly, in support of the rule to quash these orders, insisted, that the act [c] required a hiring for an entire year; that with respect to hirings the court was always strict; and that in the construction of this act the cases were uniform in ruling; that a retainer for a period, upon the face of the contract less than a year, would not give a servant his settlement: that the authorities to this point were, [d] *Frencham v. Pepper Harrow*, [e] *Coombe and Westwoodhay*, [f] the King v. the Inhabitants of *Westwell*, [g] the King

[a] M. 13. G. 3. 1778. Burr. Settl. Cases, 719.

[b] Tr. 10 G. 3. 1770. Burr. Settl. Cases, 669. Bott. 271.

[c] 3 W. & M. c. 11. § 7.

[d] E. 1 G. 10 Mod. 293. Fort. 322. Foley, 135. It is also cited in R. v. Inhabitants of *Hauhton*. H. 4 G. 1. Str. 83.

[e] H. 5 G. 1. Str. 143.

[f] Tr. 3 G. 2. 1730. 1 Barnardist. 354.

[g] E. 5 G. 2. 1 Self. Caf. 174.



1780.
R. v. INHA-
BITANTS OF
HARWOOD.

v. the Inhabitants of *South Cerney*, and [a] the King v. the Inhabitants of *Newton*: that the case of *Navestock* was by no means an authority to the contrary; for, upon the principle that there can be no fraction of a day, [b] the court were then of opinion, that under the terms of the hiring the last day was included: that, as to the King v. *Newstead*, such hirings may prove more or less than a year: but that it did not, as here, appear to be less.

Willes, J. The question is, whether a hiring for three days less than a year is a hiring for a year within the meaning of this act? The cases cited are against it; and one of them, the King v. *Newton* is full in point even against any custom for less than a year having effect. As to the two cases relied upon on the other side, they do not contradict this doctrine: the first was a hiring from one moveable feast to another; the precise duration therefore of the service might probably have not been in the knowledge of either party at the time of the contract; and it might have exceeded a year. In the King v. *Navestock*, the hiring being *till* Michaelmas, the law, which makes no fraction of a day, included that day, by which the year was completed: and the general doctrine laid down by Mr. *Fearnley* was there recognized by the court.

Ashburst, J. It appears very extraordinary to me, that an idea could be entertained, that a custom, no older than King William, could controul an act of parliament. The case of *Navestock* goes as far as it ought, and I should not choose to go further.

Buller, J. There is no case in which a hiring, which must necessarily be less than a year, has been adjudged to give a settlement; and it would be dangerous to make a new precedent of that sort. The question in the King v. *Navestock*, was, whether, on a hiring from the day after *Michaelmas-day* TILL *Michaelmas-day*, that day should be holden inclusive or exclusive? A custom is only material to explain the terms of a contract, when ambiguous. In that case therefore it was allowed to have its weight: but all the cases agree, that there must be a hiring for a year.

Lord *Mansfield* was absent.

Rule absolute and both
Orders quashed.

[a] M. 14 G. 2. 1740. Burr. Settl. Cases, 157.

[b] Vide R. v. Inhabitants of Syderstone cum Bermer. E. 17 G. 3. 1777. *Ante*, p. 19.

Hilary Term

21 Geo. 3. 1781.

Rex v. Inhabitants of Heckmondwicke.

Saturday,
Jan. 27.

TWO justices remove *Frances*, the wife of *Abraham Preston*, a soldier, and their child, from the township of *Batley*, in the West riding of the county of *York*, to the parish of *Heckmondwicke*, in the same riding. The sessions on appeal confirm the order, and state the following case:

That — *Preston* widow, mother of the said *Abraham Preston*, the husband of the pauper, occupied a dwelling house in the township of *Batley*; and was rated, and paid all assessments, till the time of her death, which happened on the 16th of *March*, 1778: that, upon her death, the said *Abraham Preston* became tenant of the said house, from that time until the year 1780; and, during all that time, paid all the assessments charged upon the said house; that it was known to the parish officers of *Batley*, that the said widow *Preston* was dead; and that the said *Abraham* was tenant and occupier of the said house: and, the assessments being produced, it appeared that the name of widow *Preston*, was continued therein.

Cockell shewed cause in support of these orders; and contended, that, though it had been resolved, that to satisfy the act, [a] a pauper need not be rated by name, and that a designation of his person, fairly pointing him out to the parish was sufficient, yet such designation must appear upon the face of the rate, and is not to be collected from collateral circumstances: and that there were

The name of the late tenant appearing upon the rate, and the occupation of the present tenant being known to the parish, the present tenant by paying gains a settlement.

[a] 3 W. & M. c. 11. s. 6.

1781.
 R. v. INHA-
 BITANTS OF
 HECKMOND-
 WICK.

numerous instances, in which the circumstance of another person's name appearing in the rate defeated the settlement; and to this point he cited the case of [a] the King v. the Inhabitants of *Sarrat*, [b] the King v. the Inhabitants of *Bramshaw*, [c] *Solentongham v. Worpleston*, in *Surrey*, [d] the King v. the Inhabitants of *Carstallton*; and he insisted upon the case of [e] *Kinfare v. Kingswinford* as in point: that, if the parish officers knew of the mother's death and the pauper's occupation, yet as the pauper had never claimed or insisted upon being personally rated, it was no part of their duty to instruct him in the legal requisites with respect to rating, for the purpose of throwing upon themselves the burthen of his maintenance: and that they had therefore, in the exercise of their discretion, purposely continued the mother's name in the rate.

Lord *Mansfield*, stopping *Fearnly*, who rose in support of the rule to quash these orders.

The case is settled. There must be such a rating and paying under it, as shew manifestly that the parish had notice. Here they did not rate a dead woman: the charge therefore could only have been made upon the person, whom they knew to be the occupier. It is precisely the same, as if they had said; "late widow *Preston's*", the pauper's mother: and then it comes exactly within a late case; [f] where the words were: "late *Lowbridge's*."

Willes, Ashurst, and Buller, justices, concurring,

Rule absolute, and both
 Orders quashed.

[a] M. 9 G. 2. 1735. Burr. Settl. Cases, 73.
 [b] M. 10 G. 2. 1736. Burr. Settl. Cases, 98.
 [c] M. 13 G. Fol. 128. 2 Sess. Cas. 134.
 [d] E. 15 G. 3. 1775. Burr. Settl. Cases, 809.
 [e] E. 4 G. 2. Fol. 129. 2 Sess. Cases, 170.
 [f] M. 18 G. 3. 1778. R. v. Inhabitants of *Walsall*. *Ante*, p. 35. *Vide* also the case of the King v. the Inhabitants of *St. John, Southwark*. Tr. 19 G. 3. 1779. post.

1781.

Rex v. Inhabitants of Sandwich, otherwise Swannage.

Saturday,
Jan. 27.

TWO justices allow a rate of one penny in the pound for the relief of the poor of the parish of *Sandwich*, otherwise *Swannage*, in the isle of *Purbeck*, in county of *Dorset*.

The court will not quash a rate for inequality, because houses and land are rated to the poor in equal proportions.

Upon the appeal of *John Beamister* and others, occupiers of lands in the said parish, against this rate, their notice, amongst other causes, set forth, "That the rate, was unequal and partial, because tenements and farms, consisting of houses, land, or ground, are in such rate or assessment charged and assessed at *one penny* in the pound, and cottages or dwelling-houses at only *three farthings* in the pound: whereas such cottages, or dwelling-houses ought to have been rated and assessed, on a par with tenements and farms, at one penny in the pound."

The sessions quash the whole rate and order a new equal assessment to be made; and state the following case:

That it was proved, on the hearing of the said appeal, that this was an assessment of *one penny* in the pound on the occupiers of lands and *three farthings* in the pound on the occupiers of cottages and dwelling-houses, according to their then annual rents; that, from the year 1735, to the year 1776, a constant distinction had been observed, in rating houses and lands, the former having always been rated in a less proportion to their rents, at the respective times of such rating, than the latter; that the land in general, in the parish of *Swannage*, is burthened with no particular charges that are not incident to land in general; but that both lands and houses are subject to the usual repairs, and taxes, generally incident to each respectively.

Rooke being called upon to support the rule to quash the order of sessions, contended; that, on account of repairs and other incidental charges, nothing was in itself more reasonable, or more generally received, than the practice of rating houses lower than lands: that, in consequence of what seemed to be the opinion of the court last year [a], when the same question came before them from this parish, and also in consideration of the custom stated, the parish had in the present rate revived that distinction; that the difference therefore,

[a] R. v. Butler. H. 20 G. 1780. *Ante*, 93.

1781.

R. v. INHA-
BITANTS OF
SANDWICH
otherwise
SWARNAGE.

which the court had before said, they could not compel the parish to make, but which they intimated was reasonable, had now been made.

He also objected in point of form, that the notice of appeal was too general, and that it ought to have set out *nominatim* the particular houses, which were *under-rated*, and the particular lands, which were *over-rated*; or that the relief granted ought to have been less general; and that the sums, assessed upon the lands, ought to have stood assessed, and the sums, assessed upon the houses ought to have been increased: that the rate therefore might on this notice have been amended, and consequently ought not to have been altogether quashed: that the justices are prohibited from so doing by St. 17 G. 2. c. 3. s. 6. and that it has been so adjudged in the case of [a] the King v. the inhabitants of *Witney*, and [b] the King v. the Inhabitants of *Ringwood*: that, in consideration of consequences, the court will incline in favour of rates: that, if quashed, all the money collected under them must be refunded; and, if coercive measures have been used, trespass lies against the parish officers.

Dunning, in support of the order of sessions, insisted, that there was nothing in the order, which imported that the sessions did not act upon other considerations than merely the comparative value or rent of lands and houses: that the court never had or ever will lay down any general rule for assessing lands and houses: that the just proportion between them must ever depend upon local circumstances; that in this parish there existed circumstances, such as would well warrant an equal assessment of each species of property: viz. that nine-tenths of the burthen of the poor arose from the houses: and that the rate could not be amended, as the objection went to every name in the rate.

Lord *Mansfield*,

The court has certainly laid down no general rule as to the mode of assessing houses and land. They certainly could not lay down any such rule either one way or the other. The proportion in which they respectively contribute, must ever depend upon local circumstances; and if nine-tenths of the burthen arise from the houses, such circumstance was sufficient to influence the judgment of the court below in adjusting that proportion. The objection

[a] E. 10 G. 3. 1770. Bott. 34. and since reported in 5 Burr. 2634. and 2 Blackst. 709.
[b] Tr. 15 G. 3. 1775. Cowp. 326.

here

here goes also unavoidably to the whole rate; for it is throughout made by a rule and proportion which the justices thought unequal, and therefore they could do nothing but quash the whole.

1781.

Willes, Ashurst, and Buller, justices, concurring,

R. v. INHABITANTS of SANDWICH otherwise SWANNAGE.

Rule discharged, and the Order of Sessions, quashing the Rate, affirmed.

Rex. v. Inhabitants of Nympsfield.

Thursday, Feb. 8.

TWO justices remove *Hannab Lloyd* and her child from the parish of *Avening* in the county of *Gloucester* to the parish of *Nympsfield*, in the same county. The sessions on appeal confirm the order, and state the following case:

Servant sleeping with his wife without his master's knowledge, out of the parish in which his master lives, gains a settlement.

That *John Lloyd*, was hired to Lord *Ducie*, who resided in the parish of *Woodchester*, at *Christmas*, 1771, as a game-keeper. That he lived the year in that service, and lay over the stables belonging to his Lordship's house; which stables were in the parish of *Nympsfield* in the said county of *Gloucester*, where some of the other men servants lay: that at *Christmas*, 1772, he received his year's wages and continued in the same service under the said hiring till *Lady-day* 1773, when he quitted his service: that in the month of *February*, 1773, he married *Hannab*, his now wife, who resided with her father in the parish of *Avening*, an adjoining parish in the said county: that, the said *John Lloyd* lay at *Avening* the greatest part of the last 80 days before the time of his quitting his said service, without the privity or consent of his Lordship or knowledge of his house-steward; who said, had he known thereof, he would certainly have acquainted his Lordship therewith.

Baldwin had moved for the rule to quash these orders, and now, *Glyfford* admitting that he could not distinguish this case from that of [a] the King v. the Inhabitants of *Hedfor*,

Per curiam,

Rule absolute and both Orders quashed.

[a] Tr. 18 G. 3. 1778. *Ante*, 51.

1781.

Saturday,
Feb. 10.

When the title of the rate is so much in the pound, and the pauper's name and yearly rent are inserted in the rate, a settlement is gained; though no sum appears to be assessed.

Rex v. Inhabitants of Corhampton.

TWO justices remove *Maria*, the wife of *Richard Goodiff*, and her three children, from the parish of *Croydon*, in the county of *Surrey*, to the parish of *Corbampton* in the county of *Hants*. The sessions on appeal confirm the order, and state the following case:

Richard Goodiff, the husband of one, and father of the other person removed, was originally settled at *Corbampton*: in 1769, came to *Croydon*, and there rented a house at 4 *l.* 10 *s.* per annum. On the 10th of *June*, 1773, the overseers, &c. made a rate of 2 *s.* in the pound, *prout*.

Rent.		Occupiers names.	Sums assessed.
£. 4.	Q. C.	Richard Goodiff.	

The overseer on the 22d demanded of him for the rate 8 *s.*, declaring he was assessed that sum for the relief of the poor: the pauper, *Goodiff*, objected to the payment thereof, alledging he was not a parishioner. The overseer opened the rate book, shewed him his name therein; and threatened to distrain for the 8 *s.*, if he did not pay it. *Goodiff*, on this, paid the money directly. In the afternoon of the same day the overseer returned, with the vestry clerk, and offered to return the money, alledging that he had taken it by mistake. *Goodiff* refused to receive it. The overseer however left it, and went away; on which *Goodiff* threw the money after him.

It was admitted, that Q. C. meant *Quære* certificate.

Mingay shewed cause in support of these orders; and contended, that though in all the cases, which have turned upon the description of the pauper upon the face of the rate, the court has inclined in favour of the person described, yet here there was neither any rating in point of fact, or had there ever been on the part of the parish an intention to rate the pauper: that the rate remained in blank to this day: that the error of their officer, which he attempted the same day to correct

rect, ought not upon principle to conclude the parish; and that it had been so adjudged in the case of [a] the King v. the Inhabitants of Warblington; in which case it was also determined, that no settlement could be gained by the pauper; as "the rate was left in blank during the whole year and no fine set against his name."

1781.

R. v. INHABITANTS OF CORHAMPTON.

Kerby S., in support of the rule to quash these orders, insisted; that the not finding of the particular sum assessed, in its proper column, was immaterial; as, by reference to every other part of the rate, its true construction and the intent of those who made it, were obvious: that as the pauper's name appeared upon it, the style of the rate would alone have supplied this omission; for it was stated to be a rate of 2s. *in the pound*: but that the rent of the pauper's house was also correctly stated in its proper place; and that the whole together amounted to as full demonstration, that the pauper was, as that no other person could be, rated: that, as to the objection, that the parish did not *intend* to rate the pauper, it is no part of the duty of the parishioners at large to do this; but that it is the peculiar province of that officer, who in this case actually had *done* it; and afterwards enforced the payment: that, as to the case of Warblington, it turned altogether upon fraud; that the pauper had used misrepresentation; and the transaction having been twelve months after the rate made, and when the officer acted under a different appointment, that it was considered as the act of an unauthorized individual; and not an act of office, and such as would consequently bind the parish.

Lord Mansfield, (stopping Palmer,)

There is no question at all. It is shewn that the case of Warblington does not apply. Here is a rate made, and the title of it is, "a rate of 2s. in the pound." There is a column, ascertaining the rent; and the moment you fix the rent, you fix the proportion of the rate; for the sum to be assessed is a consequence. What is the inserting of his name but rating him? And for what purpose is his name so inserted? To denote he is to pay. Then has he paid? Yes, and against his will. After this, the parish officer shall not be permitted to say: "I have thought better of it since the morning: take back your money, for you shall gain no settlement here."

Willes, Ashburst, and Buller, justices, concurring,

Rule absolute and both
Orders quashed.

Easter Term

21 Geo. 3. 1781.

Saturday,
May 5.

Rex v. Inhabitants of St. Michael in Bath.

TWO justices remove *John Freeman* and *Elizabeth* his wife from the parish of *Wallcott*, in the city of *Bath*, in the county of *Somerset*, to the parish of *St. Michael*, in the same city and county. The sessions on appeal confirm the order, and state the following case:

An insolvent, conveying his whole estate to trustees for payment of his debts, and those debts, at the time of the hearing of the question, at least, appearing to exceed the value of his estate, cannot by a residence upon such estate, acquire a settlement. Much less can he, if the possession of his estate has been obtained by him collusively or violently.

That the pauper *John Freeman* being intitled to two freehold houses in *Wallcott*, one of the value of 28 l. a year, the other of 26 l. a year, in 1778 conveyed them to trustees by indentures of lease and release, dated the 6th and 7th of March, 1778, in trust to be sold, and the money arising from the sale to be paid, first in discharge of two mortgages due thereon amounting to 500 l., afterwards to his other creditors rateably, and the surplus, if any, to him, his executors, administrators and assigns:—It appeared also, that the houses were both let to other persons at the time of the conveyance, and the pauper then resided in a public-house, in the parish of *St. Michael*, at the rent of 40 l. per annum; which he had occupied several years, till he failed; that, afterwards, one of the houses becoming void, the trustees having the possession and the key thereof, employed one *Betty Farrant*, then a lodger in the pauper's house, to clean the said vacant house, and paid her 3 s. for her so doing, and delivered her the key for that purpose; which the said *Betty Farrant* having done, placed the key in the bar of such said public-house amongst some other things of her own, which she kept there; intending afterwards to re-deliver the same to the said trustees: but the pauper's wife, took the said key from thence, and took the possession of the said vacant house, and, with her husband, hath continued there ever since to the time of removal, being,

in

in the whole, one year and three quarters: that one of the trustees, seeing her carrying her goods thither, gave her notice that she was doing wrong, not having the consent of either the trustees, or creditors to go thither: to which she replied, "I am going to my own estate, for I and the children can't lie in the street." That the premises have not yet been sold by the trustees; that the value thereof was proved to be about 650*l.* at present, but at the time of the conveyance were something more; the debts owing by the pauper, for which such trust deed was executed, including the two mortgages, are 881*l.* and upwards; that it doth not appear on the deed how the annual rents were to be disposed of until the sale shall be made.

Dunning and *Burrough* shewed cause in support of these orders; and *Burrough* contended, that the pauper had no such property in *Wallcott*, by a residence upon which he could acquire a settlement: that it was meant by the conveyance to divest him of every thing and to give the whole to the trustees for the benefit of his creditors: that he had no beneficial interest, no possibility of a surplus; because it is found in the case, that his debts exceeded the value of the premises: that the fact completely shut out the presumption of a resulting trust: that the operation of such a claim of property if admitted, would be to defeat the conveyance, and make him act contrary to his own deed, that, if the pauper could legally claim a settlement here, by the same rule after a residence of 40 days, the creditors might also, as many of them at least as the house would hold: that it was said on the other side, that this case might be compared to that of a person *intituled* to administration, and resident upon the property so claimed, without administration granted; and that such might be said to have an equitable estate: but in answer to this he cited the cases of [a] the King *v.* the Inhabitants of *Widworthy*, and [b] the King *v.* the Inhabitants of *Cold Ashton*, as proving that a mere title or equitable claim is not such an interest as will give a settlement: that though it had indeed been thrown out in this last case, that there might be a difference in the case of a *sole* next of kin; yet that in the case of [c] the King *v.* the inhabitants of *Painswick*, that point seems to have been settled otherwise: that it was the case of a widow, whose dower was not as-

1781.

R. v. INHABITANTS OF
ST. MICHAEL
IN BATH.

[a] Tr. 10 and 11 G. 1737. Burr. Settl. Cases, 109. Bott. 376.

[b] H. 31 G. 2. 1758. Burr. Settl. Cases, 444. Bott. 379.

[c] Tr. 14 G. 3. 1774. Burr. Settl. Cases, 783.

1781.
 R. v. INHABITANTS OF
 St. MICHAEL
 in BATH.

signed; and the court held that she could not under such circumstances by 40 days residence gain a settlement; and that this seemed equally to conclude against the claims of a sole next of kin.

Lord *Mansfield*. This case at first struck me as being like that: but I take it, before administration such next of kin does not gain a settlement. [a]

Burrough. The case of [b] the King v. the Inhabitants of *Natland*, which will be insisted upon on the other side, was an extra-judicial opinion upon the circuit; and when before this court, went off without argument upon the point: that in that case the whole trust was for the benefit of the children, one of whom the pauper was; but that here the trust was not at all for the benefit of the pauper, but wholly for that of the creditors: that even if the pauper would otherwise have had a right to reside upon the premises till the trustees had sold them, here his residence was under a possession acquired by fraud: and that as the law was clear, that a party shall never avail himself of his own wrong, so neither should the parish of *St. Michael*, who set up a right under the pauper, avail themselves of his own wrongful act.

Dunning. Considering the object of this conveyance, the silence of the deed upon the subject of the intermediate profits, founds the strongest presumption, that the whole legal and equitable estate was meant to be passed: every possessory right and title to enjoyment.

Gould and *Morris*, supported the rule to quash these orders.—*Gould* insisted, that the trustees here had no beneficial, and the creditors no legal interest: that the creditors had no *jus in re*, but were only in the situation of next of kin without administration; that the beneficial interest was certainly in the grantor till sale: that the conveyance to the trustees was subject to a mortgage: that it was clear, that a mortgagor in possession could acquire a settlement; if then this mortgagor could gain a settlement against his mortgagee, why should he not against his trustee? That though it is stated, that the debts *now* exceed the value of the estate, yet, that the case does not find, that they did so at the time of the conveyance made; that if it had, that estates are often mortgaged for more than they are worth, but that these are private transactions, into which this court can't enter: that, if the trustees made no profit

[a] *Vide* Rex v. Inhabitants of North Curry, M. 22 G. 3. 1781. post.

[b] M. 15 G. 3. 1774. Burr. Sett. Cases, 793.

of the estate for the benefit of the creditors, the benefit and use of it would result to the pauper: that being in possession of his own, the parish could not remove him: that an action for use and occupation would not lie against him: and that the trustees could not, till after a sale, have supported an ejectment against him: and he cited the King *v. Natland* as in point.

1781.

R. v. INHABITANTS OF
ST. MICHAEL
in BATN.

Morris also insisted, that an equitable interest is the same as a legal one to the purpose of a settlement: (Lord *Mansfield*. Undoubtedly so,) and that the pauper by residence upon such a property of his own had here acquired a settlement: that he had conveyed away his legal estate by deed; which is precisely the same thing as a mortgage. What difference is there then between the trustee and a mortgagee? Their situation must be the same; and till an actual sale, the surplus must be the pauper's: that, if so, the possession of these premises, not used for any purposes of the trust, must clearly be a surplus: that this case was not like that of the King *v. Widworthy*: because, where there are many next of kin, till administration is taken out, no one has any title either legal or equitable; and where there is one only, from what dropped from the court in the King *v. Cold Ashton*, it seemed, that such would gain a settlement: that in the King *v. Painfwick*, when upon the ground of its being an equitable estate, he endeavoured to support the widow's claim to a settlement, he was told, that dower was barely a right of action, and that she was a trespassor: that the pauper here might at any time have said to the creditors: "Here is your money: the trustees shall not sell:" that the trustees, until a sale, could not have supported an ejectment against their *cestuy que trust*; for the conveyance to them was only for the purpose of a sale: that afterwards indeed, that upon a sale, the vendee of the trustees might; but that no other person could.

Lord *Mansfield*.

If a man reside forty days upon his own, he gains a settlement. The question therefore is, whether this pauper did so or not? whether the property was or not his own? In judging upon these questions the court has always gone upon the real substantial right and truth of the case, independent of the form of the conveyance. If then the estate be substantially the pauper's property, whether the title be legal or equitable, whatever the exterior of conveying, this is sufficient; and therefore, in the case of a mortgage,

Q

1781.
 R. v. INHABITANTS of
 St. MICHAEL
 in BATH.

gage, either the mortgagor or mortgagee in possession may acquire a settlement: the mortgagor may, for the mortgagee, whatever the form be, has no more than a chattel: the mortgagor is the real owner, and has, in equity, the property of the land. What interest then has the pauper here? He is not a mortgagor; but an insolvent, who makes an immediate conveyance of all he has in the world to trustees for the benefit of his creditors. 'Tis true, the deed says, that the surplus, if any, shall be paid to the pauper; but the case states, that his debts greatly exceed the value of his estate. At most then he had but a chance of something; and the fact upon enquiry shews, that it is nothing. This differs most materially from the case of a mortgage. A mortgagor has an interest, and, by the very nature of the contract, a right to possession till default made, and an ejectment brought. After the mortgagee has got possession, he too may gain a settlement. But here the pauper has no right to continue a moment upon the estate. But there is still another and a stronger ground. The trustees were in the actual possession; and this possession, by means of a fraud practised upon their agent, was wrested from them by the pauper.

Buller, J.

To make this like the case of a mortgagor, to which it has been compared, a case must be shewn, in which the mortgagee has been in possession and has lost it again by the fraudulent entry of the mortgagor.

Willes and Ashburst, justices, concurring,

Rule discharged and both
 Orders affirmed.

Vide the case of the King v. the Inhabitants of Wivelingham. Tr. 21 G. 3, 1781. post.

1781.

Rex v. Inhabitants of Northfield.

Wednesday,
May 23.

TWO justices remove *Abigail Jones*, the widow of *Joseph Jones*, from the parish of *King's Norton*, in the county of *Worcester*, to the parish of *Northfield*, in the same county. The sessions on appeal quash the order, and state the following case:

That the pauper, *Abigail Jones*, being, whilst sole, a settled inhabitant at *King's Norton*, in the year 1775, intermarried with *Joseph Jones*, a settled inhabitant at *Northfield*, at *Brierly-Hill* chapel, in the parish of *Kingswinford*, in the county of *Stafford*; which, erected in the year 1765, was then duly consecrated; and in which divine service had been publicly and regularly celebrated ever since; and wherein banns of marriage had been often published, and marriages celebrated previous to the marriage in question: that the said chapel was a new one, erected since the marriage act; and not erected on the foundation of one that was ancient; and no act of parliament obtained for erecting the said chapel, or for celebrating marriages there.

Marriages since the 26th of G. 2. in chapels not having chapels or districts annexed to them, and in which banns have not usually, though they have often been published, are, upon the construction of that St. void: and no settlement can be gained under them.

Bearcroft shewed cause in support of these orders; and having stated, that this was a question upon the construction of the 1st and 8th section of [a] the St. 26 G. 2. c. 33., commonly called the marriage act, contended; that upon the facts stated in the case, this was a legal marriage: that though, in the case of [b] the King v. the Inhabitants of *Preston* near *Faversham*, it had been adjudged that the sessions, without any previous sentence of the spiritual court, or having the parties before them, might in this collateral way inquire into the validity of a marriage, entered into in direct contravention of this act, yet, that the terms of this finding must satisfy the court, that the present case did not fall within the pro-

[a] By s. 1., it is enacted, "that, from and after the 25th of *March*, 1754, all banns of matrimony shall be published in the parish church or in some public chapel, (in which public chapel, banns of matrimony have been usually published) of or belonging to the parish or chapelry wherein the persons to be married shall dwell; and by s. 8. that, if any person shall, (from or after the date above-mentioned) solemnize matrimony in any other place than a church, or public chapel, where banns have been usually published, unless by special licence, &c. every person knowingly and wilfully so offending, &c. shall be deemed guilty of felony, &c. and all marriages solemnized (from and after, &c.) in any other place than a church, or such public chapel, unless by special licence, &c.) shall be null and void to all intents and purposes whatsoever.

[b] M. 33 G. 2. 1759. Burr. Settl. Cases, 486. Vide also 1 Blackst. Rep. 192.

1781.
 R. v. INHABITANTS OF
 NORTH-FIELD.

visions of it; and that this finding would warrant them in making a construction, which would support, as it was their avowed wish at all times to do, the settlement of the pauper and the act of the court below; and at the same time prevent those heavy penalties, which must otherwise attach upon many innocent and respectable persons, as well as other consequences that must deeply affect the peace of numerous families, and probably of many that were yet unborn: that the case expressly found, that banns have been published and marriages celebrated in this chapel *often*: that the import of this word might be well considered as equivalent to that of the word *usually*, the phrase of the act: that the use of a chapel for purposes of this sort could not be supposed so regular and constant as that of a mother church; but that the acts done there were *bona fide*, and as free from all imputation of fraud and concealment, the object at which the provisions of this act were aimed, as those done in the parish church: that, if this were so, the only remaining doubt was, whether the word "*usually*" in sound construction must be referred to the time of celebrating the marriage in question, or to the time of passing the act? that this act was generally understood to have been drawn by a very eminent person [a]; That, had it been his intention to confine the celebration of these rights to buildings at that time used for those purposes, it must be presumed, that he would not have failed so to pen the act as to take in his object; but that this case had been left at large, as plainly not within the mischief or policy of that law: that, as the first marriage celebrated in this chapel could not be supported, should it be asked, at what precise period the illegality of such acts performed there ceased, and, their legality became established, it was sufficient for him to shew, that at the present it must be taken as established by usage; that usage having been uniform from the time of its erection.

Wallace, Attorney-General, and *Batt*, in support of the rule to quash these orders, insisted; that all general and conjectural reasoning upon the policy of the legislature in framing this act were altogether excluded by the express words of the 8th section; which declared all marriages, not solemnized in places where banns have not been usually published *on the 25th of March 1754*, to be void: that a succession of illegal acts could never be made a foundation of legal title: that no length of time, no custom could ever make that

[a] Lord Hardwicke.


law, which originated in opposition to the provisions of the law: *quod ab initio non valet, tractu temporis non convalescit*: that it spoke so plain, that no one could pretend not to understand it: that, the earnest debate and discussion, that it was stated on the other side to have undergone, had so universally diffused the knowledge of its provisions, as to make it still more unreasonable to affect an ignorance of it: and consequently that it was much less likely to entrap than any other prohibitory law: that, therefore it ought on every principle of justice and good sense to receive the same construction now, as if the case had arisen the day after the law had passed: that such was the received construction of the act, was evident from the line of conduct pursued in *Lincoln's-Inn*, *Gray's-Inn*, and other chapels; where, though marriages had *usually* been celebrated in them before, upon the passing of this act the practice was discontinued; and that it would be absurd to give a better situation and larger privileges to a chapel, erected since the date of the act; and in which the usage itself was not of so decided a character and so correspondent to the requisitions of the act.

Lord *Manfield*.

For a great while I was very much averse, in such a question, and between such parties, from making a decision: but upon consideration I have thought otherwise. If there has been error, and ill consequences must follow, we ought to put a stop to it as early as possible: lest it should pass as if a doubt had been entertained by the court, where they had no doubt at all. And were the error under such circumstances to be persisted in, a reproach would justly lie upon the court for not having declared the law. To be sure there may be irregular acts, that length of time will cure; and this statute does not take away the evidence of presumption arising from cohabitation: but where the evidence is clear, that any of the legal requisites are wanting, the marriage must be void. I remember in the case of the *Savoy* chapel, the minister, after the passing of this act, persisted in defiance of it, to celebrate marriages there. He insisted that he had a particular privilege of marrying without a licence; and availing himself of a dispute then subsisting between the crown and the duchy of *Lancaster*, sheltered himself sometimes under one and sometimes under the other. He had married may hundreds in the year; but it was necessary to interpose and check an evil, which must otherwise have in great measure defeated the act; and when Attorney-General, I prosecuted and convicted him. The interposition

1781.

R. V. INHABITANTS OF NORTH-FIELD.

1781.  terposition of the legislature [a] may confirm the marriages celebrated in this chapel; but the act clearly meant churches or chapels existing *at the time*, and in which banns were *then* usually published. It also speaks [b] of "the church or chapel, of or belonging to the parish or *chapelry*, within which the usual *place of abode* of one of the parties has been &c."; meaning such chapels as have a district annexed: and there is no such chapelry here. If, as is admitted, the first marriage was bad, so must every succeeding one be. A number of instances, all void, cannot make a foundation for a legal usage. This case comes directly within the provisions of the act, and the marriage is void.

R. v. INHABITANTS OF NORTH-FIELD.

Willes, Ashburst, and Buller, justices, concurring,

Rule absolute, and both
Orders quashed.

[a] In consequence of this judgment an act, 21 G. 3. c. 53. passed, giving validity to all marriages already had or to be solemnized before *August 1, 1781*, in all churches and chapels erected since the St. 26 G. 2. c. 33.; and indemnifying such clergymen, as, before the 10th of *July, 1781.*, had solemnized such marriages.

[b] Sect. 4.

Wednesday,
May 23.

Rex v. Inhabitants of Hulland.

TWO justices remove *James Bently, Elizabeth* his wife, and their two children, from the liberty of *Hulland*, in the county of *Derby*, to the parish of *Bradley*, in the same county. The sessions on appeal quash the order, and state the following case:

The settlement of a servant, who has in his annual service been a legal inhabitant for forty days in several parishes, is determined by the last day's legal inhabitancy in any of these parishes.

That at *Whitsuntide, 1768*, the pauper, who was then a single man and a blacksmith, hired himself at *Hulland* for a year to *Joseph Copestick*, blacksmith, who had a house and shop at *Bradley*, and another house and shop at *Hulland*; and who resided occasionally at each place; but whose family resided constantly at *Bradley*: and that the pauper served the year—That the pauper

worked

worked at the shop at *Hulland*, and lay there five nights in the week during the year, except three weeks together in the latter end of *February* and the beginning of *March* in 1769; and sometimes a night or two besides, when he lay at *Bradley*; and, on the *Saturday* and *Sunday* nights the year through, he generally lay at *Bradley*, and never at *Hulland* on those nights; that the pauper never resided forty days together at either place, but he resided more than forty days at each in the year; and the last two nights of the year he resided at *Bradley*.

1781.
R. v. INHABITANTS OF
HULLAND.

Dunning and *Coke* shewed cause in support of the order of sessions and insisted, that by the act of the 13 & 14 of Car. 2. c. 12. which was an explanatory law, servants were to be removed to the place, where they were *last* legally settled for the space of forty days: that a servant is settled, wherever in such service he *inhabits* for forty days, whether they were successive or not: that the sessions had therefore, under the circumstances of this case, pursued the only legal course in their power; which was, counting backward from the end of the service, and fixing the pauper in that parish, in which they first found him by that rule to have been a legal resident as a servant for forty days: that in the case of [a] the King v. the inhabitants of *Lowest*, which would be relied upon on the other side, it was so far from true, that the circumstances of the last day's residence was the principle that had governed the decision, that it did not appear from the report upon what ground the court had gone; but that a much better ground of decision was suggested in the case: viz. that the pauper resided most part of the latter part of his service in the parish, in which he also happened to have lodged the last night: that the pauper here had lodged the greater part of the whole year in the parish, in which he had not lodged the last night: that it was not only contrary to the provisions of the act, but that it appeared irreconcilable to common sense, that the last day of the year spent in one parish, when the inhabitancy throughout the whole year had been in a shifting and fluctuating state between many parishes, should attach upon and fix the settlement; and that, if the first thirty-nine days of the year were spent in the parish of *A*, and every other, except the last in that of *B*, that the last day, which at such an interval barely com-

[a] E. 16 G. 3. 1776. Burr. Sett. Cas. 825.

1781. pleated the number of forty, should singly be more effectual than the whole antecedent period, consisting of so many unbroken forty days.

R. W. INHABITANTS OF HULLAND.

Balguy, in support of the rule to quash this order, insisted; that the argument, which it was said the case of the *K. v. Lowes* supplied, and which had been now advanced for the first time, viz. the residence of the pauper for the greater part of the year, could not be material; it having been adjudged, in the case of [a] the *K. v. the Inhabitants of Hedfor*, that a settlement may be gained in a place, where not an hour's service has been performed: that the circumstance of the last day's residence was the principle, upon which the court determined the question in the *K. v. Lowes*: that this was the point, upon which the counsel on the other side had rested this case; and that the counsel for the parish of *Lowes* felt the weight of the argument, was evident from the manner in which he attempted to evade it; viz. by his pressing upon the court that that fact was not positively alledged in the case: but that this case was in point: that the ground was, that as it was unquestionable that the service, though at different times and places, is still the same service, and, as it had been admitted that that service need not be successive, need not be all at the same time, the court must then connect the last service with the first; and consequently the settlement, if there has altogether been a residence of above forty days, is where such last service was performed.

Willes, J.

In a case like this it is absolutely necessary that some leading circumstance should be selected; and constituted a governing principle. Mr. *Dunning* has produced no authority in support of his position, that the larger portion of time in any part of the year [b] ought

[a] Tr. 18 G. 3. 1778. *Ante*, 51.

[b] In the *King v. Lowes*, the pauper, when he first came into that parish, continued to reside there for more than half of the entire year; and yet this, the last day having been served elsewhere, was not thought sufficient to fix him as an inhabitant there. *Ajlon, J.* indeed at first inclined to think, that the pauper was settled in that parish; that being the only place, in which a continued forty days appeared to have been served; but he afterwards concurred with the court in adopting the principle, upon which the case had been argued; and which has been recognized in the case of the *King v. the Inhabitants of Lyeiton*. E. 23 G. 3. 1783. post.

In cases where an annual service consists of residences made up of broken and detached periods of time in different parishes, if upon the question of settlement the duration of each point of time in each parish were to be minutely discussed, each of such points of time would be in the nature of a distinct issue. It seems therefore that the number and expence of witnesses, the additional uncertainty of the event, and the invitation, which the calculation and adjustment of such minute portions of time must give to a litigious spirit, are abundantly sufficient to evince the policy and wisdom of reducing this question, at least as near as might be, to a single point.

Easter Term 21 Geo. 3.

121

to be the rule. Some there must be, and there seems to be good sense in that laid down by Mr. *Balguy*.

1781.

Ashurst, J.

A certain rule is desirable. There does not seem to be much argument either way: but it appears from the report of the King *v. Lowes*, that stress was there laid upon the circumstance of the last day's residence.

R. v. INHABITANTS OF
HULLAND.

Builer, J.

That some rule should be fixed is much more material than what that rule is. A satisfactory rule seems established in the King *v. Lowes*; and I think we ought to adhere to it.

Rule absolute,
Order of Sessions quashed, and
Order of two Justices affirmed.

Lord *Mansfield* was absent.

Trinity Term

21 Geo. 3. 1781.

Rex *v.* Inhabitants of Wivelingham.

Saturday,
June 30.

TWO justices remove *Mary Bittany*, otherwise *Bitten*, widow, and *Mary*, her daughter, from the parish of *Haddenham*, in the Isle of *Ely*, to the parish of *Wivelingham*, in the county of *Cambridge*: The sessions on appeal confirm the order, and state the following case.

R

That

1781.

R. v. INHABITANTS OF
WIVELINGHAM.

Devisee of the residue of real estate, devised in the first instance to trustees to sell and pay debts, has such equitable interest therein, as will by residence thereon for 40 days give a settlement.

That *Robert Bittany*, the late husband of *Mary Bittany*, one of the paupers, came with the said *Mary*, and *Mary* their daughter, from the parish of *Wivelingham* in the said county of *Cambridge*, to the hamlet of *Aldreth* within the parish of *Haddenham* aforesaid, with a certificate under the hands and seals of the churchwardens and overseers of the poor of the parish of *Wivelingham* aforesaid, bearing date the 12th day of *Dec.* 1750; which acknowledged the said *Robert Bittany* and *Mary*, his wife, and also *James* and *William*, their children, to be inhabitants legally settled in *Wivelingham* aforesaid. That the said *Robert Bittany* continued at *Aldreth* aforesaid between five and six years; when he returned to *Wivelingham*, where he remained between twelve and thirteen years: that he then went and resided at *Aldreth*, upon an estate which he acquired in the following manner. One *Elizabeth Bittany* aunt of the said *Robert*, being seised in fee of a copyhold messuage or tenement in *Aldreth*, in the parish of *Haddenham* aforesaid, holden of the manor of *Haddenham*, duly surrendered the same to the use of her will; and being also seised of a freehold dove-house and piece of land in *Aldreth* aforesaid, did in and by her last will and testament in writing, bearing date the 13th day of *April*, 1768, devise in the words following, that is to say: "I give and devise all that my copyhold messuage or tenement wherein I now dwell, with the appurtenances thereto belonging, also my freehold dove-house, and the piece of land which the same now stands on, unto *Thomas Sharp* of *Aldreth*, in the parish of *Haddenham*, and *Richard Webb* of the same place, and to their heirs, in trust, to be sold as soon as conveniently can be after my decease, for the best price or sum that can be got for the same; and the money arising by sale of the said messuage, dove-house, and the piece of land, on which the dove-house now stands, (over and above the charge and expences of selling the same) to be equally divided between *Robert Bittany* and the three daughters of *William Bittany* deceased, share and share alike." It also appears in evidence to this court, that *William Bittany* in the said will mentioned, was the elder brother, and *Robert Bittany* a younger brother; and that they were the nephews of the said testatrix, *Elizabeth Bittany*; and that upon her death, which happened about twelve years ago, the said *Robert Bittany* took possession of the said copyhold messuage: It likewise appears in evidence to this court, that by indentures of lease and release, bearing date respectively the 24th and 25th days of *May*, which was in the year of our Lord 1768, the release

release being tripartite and made between the said *Thomas Sharp* and *Richard Webb*, the devisees in trust aforesaid, of the first part, *Jane Bittany*, spinster, *John Aungier* and *Mary*, his wife, late *Mary Bittany*, spinster, and *Elizabeth Bittany*, spinster, of the second part: and the said *Robert Bittany* husband of the said pauper, *Mary*, of the third part, reciting the will of the said *Elizabeth Bittany*, and that the said *Jane Bittany*, *John Aungier* and *Mary*, his wife, *Elizabeth Bittany*, and *Robert Bittany*, had agreed with the consent and approbation of the said *Thomas Sharp*, and *Richard Webb*, that the said *Jane Bittany*, *John Aungier*, and *Mary*, his wife, and *Elizabeth Bittany*, should take, and (accordingly they did take,) the ready money of the said *Elizabeth Bittany*, amounting to 60 l. (after all her just debts and funeral expences were satisfied,) for their shares; and that the said *Robert Bittany* should take the said dove-house and piece of ground for his share; It was by the said indenture witnessed, that, in consideration of the aforesaid agreement, the said *Sharp* and *Webb* did, thereby grant, bargain, sell, and convey, unto the said *Robert Bittany*, the said freehold piece of ground, with the dove-house thereon erected, situate in *Aldreth* aforesaid, to hold to the said *Robert Bittany*, his heirs and assigns for ever. And that in the said indenture was a covenant from the said *Sharp* and *Webb* for peaceable and quiet enjoyment, and to make further assurances; and that there then followed a covenant from the said *Jane Bittany*, *John Aungier*, and *Mary*, his wife, and *Elizabeth Bittany*, to the said *Robert Bittany*, his heirs and assigns, that for the further performance of the said agreement, and for quieting the said *Robert Bittany*, his heirs and assigns in the peaceable and quiet possession not only of the said freehold piece of ground, dove-house, and premises, but also in the copyhold messuage, and premises with the appurtenances, and for extinguishing any claim they, or any of them, might challenge or demand, of, in, or to the same, as heiresses at law of the said *Elizabeth Bittany*, or otherwise howsoever, they the said *Jane Bittany*, *John Aungier*, and *Mary*, his wife, and *Elizabeth Bittany* did thereby remise, release, and for ever quit claim, unto the said *Robert Bittany*, all manner of right, title, trust, property, claim, and demand whatsoever, of, in, to, or out of the said freehold premises, and also of, in, to, and out of, all and singular the said copyhold premises; and did thereby, severally promise to do any further act or deed, for continuing the said copyhold messuage and premises to the said *Robert Bittany*: that it does not appear in evidence to this court,

1781.

R. V. INHABITANTS OF WIVELINGHAM.

1781.
 R. v. INHABITANTS OF
 WIVELING-
 HAM.

that any further conveyance of the said copyhold premises in the said indenture mentioned, was made by the other parties therein named to the said *Robert Bittany*; but it appears that at a court holden for the manor of *Haddenham*, on the 17th day of *April*, 1770, he the said *Robert Bittany* was admitted in fee to the said messuage or tenement with the appurtenances, as cousin and heir at law of the said *Elizabeth Bittany*. That it likewise appears in evidence to this court, that the said *Robert Bittany* resided in the said messuage, and continued in the uninterrupted possession and quiet enjoyment of the said freehold and copyhold estates, to the time of his death, being about eleven or twelve years, and was during that time, assessed, and paid to the land tax for the said premises; but that the said premises were not, at any time, of the value of 30*l.*; and that they are at this time agreed to be sold for 15*l.*

Howorth shewed cause in support of these orders: and stated the question to be, whether the residence of the pauper's husband in the parish of *Haddenham* was such a residence upon his own estates, as, by discharging his certificate, would enable him to acquire a settlement? He admitted, that an equitable interest in lands or tenements is as effectual for the purpose of a settlement as a legal one; but contended, that in this instance the pauper's husband had taken no interest of either kind: that the legal estate was clearly in the trustees; and that there could be no other right in the pauper's husband than that of calling upon the trustees to sell and make distribution.

Pemberton, A. in support of the rule to quash these orders insisted; that the pauper's husband, *Robert Bittany*, whatever might be the operation of that part of his legal title which he derived under the trustees, by virtue of his purchase, had clearly an equitable interest under the devise: that it had been established by repeated decisions [a], that if any part of an estate becomes, either by descent or devise, *i. e.* without any pecuniary consideration paid for it, the property of any one, such person, by a residence of 40 days, discharges his certificate and acquires a settlement: that there was an additional ground, to which, if necessary he should also resort;

[a] R. v. Inhabitants of Marwood, H. 29 G. 2. 1756. Burr. Sett. Cases, 386. R. v. Inhabitants of Uffculme. Tr. 30 & 31 G. 2. 1757. ib. 430. R. v. Inhabitants of Ingleton, E. 6 G. 3. 1776. ib. 560.

viz. that, by ceasing to live under the certificate for the space of twelve or thirteen years and returning and residing during the whole of that period in the parish certifying, the certificate was abandoned and consequently discharged: and, if so, by these or any other means, he must then have gained a settlement by having paid, and been assessed to, the land-tax.

1781.
R. v. INHABITANTS OF
WIVELING-
HAM.

Lord *Mansfield*, who in the course of the argument had referred to the case of [a] *Roper v. Radcliffe* and another, in which it had been determined in the House of Lords, that a devise of the surplus of lands, devised in trust to be sold in the first place to pay debts and legacies, was a devise of a profit arising out of land; and that such devisee, by laying down the money, might in equity prevent the sale, now said.

As it was perfectly clear, that such a devisee might elect to have the land itself, discharging the incumbrances, a settlement may be acquired by residence upon such an equitable estate; and under all the authorities the pauper here had a right to reside.

Willes, J.

This question was before the court in the case of [b] the King v. the Inhabitants of *Natland*, which had been referred to *Gould, J.* upon the circuit at *Lancaster*; and the court there recognized his opinion, that a title to a distributive share of the money to be raised by sale of lands gave a settlement after due residence; such resident not being during that time removeable.

Asheburgh, and *Buller*, justices, concurring.

Rule absolute and both
Orders quashed.

As to the other point made by Mr. *Pemberton*, (the avoidance of the certificate by the abandonment stated,) the court seemed to think it had little weight; but gave no express opinion.

Vide the case of the King v. the Inhabitants of St. Michael's, Bath. E. 21 G. 3. 1781.
Ante, 110.

[a] E. 13 Ann. 1714. 2 Peete Will. fo. 4. 5. 9 Mod. 167. 181. 10 Mod. 231. Bac. Abr. tit. Papists, vol. 3. 795. Brown's Cases in Parliament, vol. 1, 450. And in the case of *Poore v. Blount*. Tr. 16 G. 3. 1776. this case is stated and recognized by Lord *Mansfield* in giving the judgment of the court. Cowp. fo. 467.

[b] M. 15 G. 3. 1774. Burr. Settl. Cases, 793.

Michaelmas.

Michaelmas Term

22 Geo. 3. 1781.

Saturday,
Nov. 10.

Rex. v. Inhabitants of Langham.

TWO justices remove *William Ellingworth* from the hamlet of the *Deanshold* in the parish of *Oakbam* in the county of *Rutland*, to the parish of *Langham* in the same county. The sessions on appeal confirm the order, and state the following case:

The express consent by parole of a first master to a service with a second, is, for the purpose of a settlement, a legal assignment of an apprentice. Infant parish apprentice and his master cannot by themselves vacate their indentures.

The pauper was bound apprentice by indenture of the 18th of *March*, 1773, duly executed and allowed by two justices, to *Benjamin Stimson*, of *Langham*, weaver and woolcomber, from the churchwardens and overseers of the poor of the *Deanshold* in the parish of *Oakbam*, to serve till the age of twenty-four years; under which indenture he remained in such service four years and upwards, when the said *Stimson* his master, failed in his circumstances, and having no longer employment for him, told his said apprentice he might go to his father, *John Ellingworth*, at *Oakbam*. Upon the apprentice coming home, his father and grand-father applied to one *William Beecroft*, of the said *Deanshold* in *Oakbam*, weaver and woolcomber, to take the said apprentice, for the remainder of the term. The father of the apprentice, then went to *Stimson*, who was at home and under confinement, and told his wife, that he, the father of the apprentice, had got a new master for his son; upon which *Stimson*'s wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said to her that he had got a new master for his son, and desired the indenture might be given up: upon which *Stimson* gave the indenture to his wife; who delivered it up to the apprentice's father, the said

said *Stimson* having first made crosses upon the indenture, as a token that he had resigned up the indenture and the apprentice. Observe that at this time the pauper was under age and is yet under age. Soon after *Beecroft* went to said *Stimson* to ask him whether he was willing to resign up his apprentice and to turn him over, as he was going to take him apprentice, if he *Stimson* was willing; and *Beecroft* told him, *Stimson*, that the apprentice was bare of cloaths, and if the father would cloath him, he would take him: *Beecroft* further said to *Stimson*, (if things came about) he hoped he *Stimson*, would never fetch him again: to which *Stimson* replied, he never would; and *Beecroft* then told him there was no occasion for a deal of trouble in turning him over, if he *Stimson*, would be honest: and upon this *Stimson* assured him he never would fetch his apprentice away; and *Beecroft* then declared, that if we have an agreement drawn to our satisfaction, it will be better than having so much trouble about it: and *Beecroft* immediately went away satisfied, that he might keep the apprentice as a turn-over. The apprentice staid with *William Beecroft* three years and a half by virtue of the above transaction, and an agreement entered into for that purpose between *John Ellingworth*, the father of the apprentice and the new master, *Beecroft*; which agreement was made in the presence of the apprentice, but he was no party to it: and the parish officers of the *Deanbold*, in *Oakham*, were perfect strangers to it. The new master kept the agreement and the original indenture. 'Tis admitted by both the appellants and respondents that at the time the indenture was delivered up to the pauper's father, *Stimson*, the first master, considered the pauper perfectly at liberty; and that his indenture was so given up, that he might make any fresh agreement, and looked upon him to be quite at large.

Dunning shewed cause in support of these orders; and he assumed it as a clear proposition, that, in this case, at the time of the pauper's entering into the second service, he was not *sui juris*: that, whatever the master and apprentice might have intended, and though, in general and in the case of adults, drawing a pen through the indentures and delivering them up might amount to a vacating of them, yet that such an intention could not during the infancy of a parish apprentice be legally carried into execution without the assent of the justices and parish officers: he cited the cases of [a] the

1781.

R. v. INHABITANTS of
LANGHAM.

[a] E. 6 G. 3. 1766. Burr. Sett. Cases, 562. also in 1 Blackst. 592.

1781. King v. the Inhabitants of *Ecclesal Bierlow* in *Sheffield*; and [a] the King v. the Inhabitants of *Ausrey*; and it seemed to be admitted both upon the bench and at the bar, that the indentures of an infant parish apprentice cannot be dissolved but under the consent of all parties concerned [b]. He then stated the question to be, whether the service of this apprentice could, at the time he went to serve his second master, be considered as a continuance of his service under his original indenture? and he contended, that as to be so considered, it must be a carrying on of the business of the first master [c], Rex v. Inhabitants of St. *Luke's*, in *Middlesex*, there was not a single circumstance in the case, that did not in the strongest manner negative the idea of its being a continuation of the old service: that the declarations of the old master were as strong to this effect as his acts, for he had said, he never would reclaim his apprentice as well as had cancelled the indentures.

R. v. INHABITANTS OF LANGHAM.

Partridge, in support of the rule to quash these orders, insisted; that the question was not singly that which had been stated by Mr *Dunning*, but rather that, which was stated by Lord *Manlyfield*, in giving judgment in the case cited [d]: "The indenture subsisted: and is the service to be considered *either* as a service of the first master *or as an assignment*?" that this was not only in substance, but in equivalent terms, an assignment; for that *turning him over* was the expression used in the treaty between the two masters: that this object was manifest; and the sole difficulty they had, was only whether an assignment by parole would prove in law an effectual security to the second master? and that this had been so established in the case of [e] the King v. the parish of *All-Hallows*.

That also, as the consent of an assignee had been holden sufficient without that of the original master, [f] Rex v. Inhabitants of *Tavistock*, it might be contended, that the consent of the father to the second service for forty days was sufficient, as including that of the original master; who by sending the apprentice home to his father, had given his father authority to dispose of him.

[a] H. 31 G. 2. 1758. Burr. Settl. Cases, 441.

[b] *Vide* the case of Rex v. Inhabitants of *Weddington*. E. 14 G. 3. 1774. Burr. Settl. Cases, 766.

[c] Tr. 5 G. 3. 1765. Burr. Settl. Cases, 542. Bott. 169. also in 1 Blackst. 553.

[d] Burr. Settl. Cases, fo. 544.

[e] Tr. 9 G. Bott. 178. it is there cited from Cases of Law and Equity. 169. In this book, 10 Mod. I neither find any such term or case. The case occurs in 1 Str. 554. 1 Sess. Caf. 275. Cases of Settlement, 116.

[f] Tr. 7 G. 3. 1767. Burr. Settl. Cases, 78. also in 1 Blackst. 635.

Lord *Mansfield*. There is no difficulty in this case. The indenture continues in force; and the only question is, whether the service of the second was with the consent of the first master? for, if so, it is a service under the indenture. Of this there can be no doubt; for he consents expressly: he cancels the indenture and directs it to be delivered to the father of the infant apprentice, who came to him for the purpose of this assignment; and he undertakes to the second master, that he would not reclaim him.

1781.

R. v. INHABITANTS OF LANGHAM.

Askeburst, J. This differs from the case cited by Mr. *Dunning*; for there the original master knew nothing of his apprentice, or with whom he worked: here is an express consent to the particular service.

Buller, J. This distinction, that an express and explicit leave and consent by the master of an apprentice to the particular subsequent service is a requisite not to be dispensed with, was taken in the King v. *Austrey*; and again in a later case. [a]

Willes, J. concurring,

Rule absolute, and both
Orders quashed.

[a] This I conceive to be the case of the King v. the Inhabitants of Ideford, H. 16 G. 3. 1776. Burr. Sett. Cases, 821; in which it was adjudged, that *mere knowledge* in a master, of the fact, with whom an apprentice lives during his term, is not *without consent* sufficient to make a legal service under the indenture. But this seems to be so settled in cases only, where all relation between the master and apprentice, as far at least as lies in the power of the master, ceases: for if the master continue to derive any advantage from the labour of the apprentice, or if it is only agreed between them that he shall, it had in the preceding year been determined, that *mere knowledge* is sufficient. Rex v. Inhabitants of Offerton. H. 15 G. 3. 1775. Burr. Sett. Cases, 802.; and it was said in that case by *Asken*, J. "I don't see the necessity of *any such privity*, where under a general leave the master receives a profit."

Rex v. Inhabitants of Westmeon.

Saturday,
Nov. 17.

TWO justices remove *Robert White* and *Rebecca*, his wife, from the parish of *Westmeon*, in the county of *Hants*, to the parish of *Hartley* in the same county. The sessions on appeal quash the order, and state the following case:

S

That

1781.

R. INHABITANTS OF WESTMEON.

A legal detainer for an offence, which prevents his completing his service, authorises a discharge by his master, and prevents his gaining a settlement.

That on the 10th day of *October*, in every year (except when the same falls on a *Sunday*), a fair for hiring of servants is holden at *Cbichester* in the county of *Suffex*, and when the same falls on a *Sunday*, then such fair is holden on the next day: that in the year 1779, the 10th day of *October* happened on a *Sunday*; and that on the day following (being the day of holding such fair) the pauper *Robert White*, being legally settled in the parish of *Hartley*, in the county of *Southampton*, and being single and unmarried, was hired by *John Gibbs*, of the parish of *Yapton*, in the county of *Suffex*, farmer, to serve him as a carter for one year, at the wages of eight guineas: that the said pauper entered into the service of the said *John Gibbs*, on the same day, and continued therein in the parish of *Yapton*, untill *Friday* the 6th day of *October*, 1780: that on the said *Friday* the said pauper was taken into custody by virtue of a warrant issued against him by a justice of the peace for the county of *Suffex*, on the voluntary examination before him of *Rebecca Heberden*, a single woman, charging the said pauper with having gotten her with child; which was born a bastard, about six months before the said 6th day of *October*; and of which said bastard child the said *Robert White* was the father: that the said pauper was carried by the officer who took him into custody, to an inn at *Cbichester*, attended by the parish officers of *Westmeon*; and from thence carried to *Westmeon*: and there by the said officers kept in custody until the 10th day of *October* last aforesaid: that on *Sunday*, the 8th day of *October*, the said *Robert White* was married to the said *Rebecca Heberden* at *Westmeon*: that the said *John Gibbs* on the said 6th day of *October* last aforesaid, at the said inn in *Cbichester*, settled with the said pauper his account of wages; saying, that he might not see him again: and the said master deducted from his wages the sum of one shilling on account of his not serving him to the end of the year: that his master thereupon said, that "though he had no objection to the pauper's gaining a settlement in the parish of *Yapton*, yet perhaps the other farmers might:" that the said master did not in any other manner assent to or dissent from the said pauper's absence from his service, from the time of his being so taken into custody for the remainder of the year, for which he was so hired as aforesaid: that the said pauper from the time of his being so taken to *Cbichester* did not return to the service of the said *John Gibbs*.

Howorth

Howorth and *Watson* shewed cause in support of the order of sessions; and they stated the question to be, whether getting a woman with child previous to the commencement of his service, was such an offence in a servant as could give his master a legal authority to discharge him: and 2dly, whether, if the law did give that power, the master in this instance exercised the power, and dissolved the contract, upon that principle and for that reason? And upon the first point they contended, that this was neither any offence at common law or by statute, unless the child became chargeable; but that, however this might be considered, it was unjust, it was impossible, to make a retrospect beyond the period at which the relation of master and servant commenced: that that was the first moment, at which the servant could be considered as under any obligation of accounting to his master for his conduct: that the fact here must have been committed many months before this relation subsisted: that, upon this as well as other grounds, this case did not resemble that of [a] the King v. the Inhabitants of *Brampton*; in which the cause of discharge must have originated during the service: but if being once father of a bastard child authorised this master in the discharge, it would also any subsequent master throughout the whole of the servant's life: that also in that case the woman, who was six months gone with child, was less able to perform the duties of her service; and that her appearance was to every decent person a visible matter of offence. But that, as to the 2d point, as the master did not give this reason for the dismissal of the servant *at the time*, he should not be permitted to resort to it *now*: that the reason given, and no doubt the true one, was, lest he should gain a settlement in the parish: that in many cases [b] it had been holden that a discharge with such a view should not prevent a settlement, and that the service continued by construction and in point of law: that nothing was to be collected from the conduct of the servant, that looked like an acquiescence in the dissolution of the contract; that the deduction from his wages was made without his consent: and that the court would lean in favour of settlements.

Lawrence and *Burrough* argued in support of the rule to quash this order: and *Lawrence* insisted, that to a settlement by service it is

1781.

R. v. INHABITANTS OF WESTMEON.

[a] H. 17 G. 3. 1777. *Ante*, p. 11.[b] *Vide* Eastland and Welthorsley, 1 Str. 526. Tr. 8 G. Rex v. *Inhabitants de Islip* in com. Oxon. E. 7 G. ib. 423. Cases of Settlement, 97. and in a case infinitely stronger, Rex v. *Inhabitants of Potter Heigham*. Tr. 11 G. 3. 1771. Burr. Settl. Cases, 690.

1781.
R. v. INN-
BITANTS OF
WESTMEON.

necessary there should be a continuance and abiding during a whole year: that this is negatived by the finding of the present case; which states expressly, that *in point of fact* the pauper was not in his service during the four last days. What circumstances were there then to induce the court to say, that he was so *by construction*? It was true, that, where this power was exercised with a view to impose unreasonable conditions, or was otherwise fraudulent, the court had interposed to prevent the settlement from being defeated; but that this court will not *presume* fraud, if not found by the court below: that it was not so found here: that indeed, if it was apparent, the court would take notice of it; but that here on the contrary the master had assigned an honest reason for his conduct: "that if he did not do that, which he had a right to do, others, who were interested, would say he had acted injuriously towards them in throwing upon them a burthen unnecessarily and improperly:" that not objecting to the deduction made, was acknowledging its justice and propriety; and that, had the pauper thought otherwise, he would have scrupled to accept the remainder: that the statutes 18 Eliz. c. 3. & 6 G. 2. c. 31. though they inflict no punishment, unless where a burthen is thrown upon the parish, consider the conduct of parents of bastard children as criminal: that consequently, whether the deduction were made with or without the servant's consent, the master was justified in saying, "you have by your own immorality put yourself in a situation, that incapacitates you from performing your contract: that, though the absence here was no more than four days, yet there was no drawing the line; and that the reasoning was the same, as if the commitment had been earlier in the service, and the absence of as many months.

Burroughs insisted, that the doctrine of favour in the case of settlements was merely referable to the construction of the statutes upon the subject; and that this was so, because those statutes introduced settlements: but that, wherever a question arose upon the contracts of any parties, such contracts were to be expounded equally and indifferently, and by the rules of the common law: that the ground of the discharge in this case was the impossibility of the servant's performing the duties of his service; that impossibility having been created by his own misconduct: that upon this obvious motive the master acted instantly: that there was not the smallest pretence upon which fraud could be imputed: that the
 8
 court

court never presumed fraud, [a] that did not plainly appear; and had refused to do so in cases, where it seemed to arise by very strong implication: as in [b] the King v. the Inhabitants of *Pres- ton*, [c] Rex v. the Inhabitants of *Weston*, and [d] Rex v. *inhabitantes de Haughton*: that fraud being out of the case, the King v. *Brampton* applied: that the principle, upon which that case went, was that such a conduct was *contra bonos mores*; and that this applied equally in the case of a man or woman servant: that in the case of [e] the King v. the Inhabitants of *Welford*, the case of a man servant, where it was only hypothetically, and not positively stated, that he was the father of a bastard child, the only doubt was upon the uncertainty of the finding; and it was sent back to be re-stated for no other purpose than that of ascertaining the fact.

1781.

R. v. INHA-
BITANTS OF
WESTMEON.

Lord Mansfield.

To be sure, they are both within the same rule.

Burrough. This fact was afterwards positively stated together with another, upon which some argument might have been founded; but it was not thought adviseable to bring it forward again: that if the servant could not, as against his master, during the imprisonment, which he had brought upon himself, support an action upon a *quantum meruit* for his wages, he could not, as against the parish, claim a settlement: that, if he was intitled to a recompence in either case, he was in both; but that there was clearly no pretence for it in either.

Lord Mansfield.

It is not necessary to enter into the question how far this is a crime; because the master has not discharged the pauper upon that ground. That it is wrong and an offence, no man will deny; but whether to be animadverted upon both by the ecclesiastical and common law is not material here. To be sure, it was not punishable as a crime at common law; and the statutes seem [f] only

[a] *Brixton, Deverell and King's Westwood*, T. 6 G. 3. Held, where facts are equivocal; and only evidence of fraud, the fraud itself must be stated in the order: but where a fact is fraud apparent, the court will say, it is fraud. *Wynne's Analysis of the Law concerning parochial provision for the poor*, 1767. p. 43; *ib.* p. 50. The state of this case and its proper title, Rex v. inhabitants of *Frome Selwood*, is given in *Burr. Settl. Caf.* 565.

[b] H. 4 G. 2. Bott. 312. also stated *arguendo* in *Burr. Settl. Caf.* fo. 69.

[c] Tr. 14 and 15 G. 2. 1741. *Burr. Settl. Caf.* 166. 2 Str. 1156. 2 Sess. Caf. 189.

[d] H. 4 G. 1. Str. 83. fol. 137. 10 Mod. 392.

[e] Tr. 18 G. 3. 1778. *ante* p. 57.

[f] Whether under the construction of St. 34 E. 3. independent of the consideration of indemnity to the parish, this is or is not to be considered an offence in some sort against the peace? *Vide* in

1781.
 R. v. INHABITANTS OF
 WESTMEON.

only to go to the punishment of the parents, for the purpose of securing an indemnity to the parish. But here this offence is not assigned as the reason for discharging the servant; and if it were, I have no difficulty to say, that I think a master, hiring a servant after an offence committed, and that not in his own house, shall not at the close of the year discharge him under this pretence: it is not a debauching of his servant, or turning his house as it were into a brothel. I do not go on that ground, nor upon the consent or implied agreement to go before the end of the year; for there was none: it was against the intention of both parties, that it should affect the settlement: and if the case were to go upon that, it ought to be returned to the sessions to have that fact stated. There was no fraud intended, because there was no agreement: nor did the master mean either to prevent or promote the settlement; but he deducts a something, to leave that question open, which it was the object of other persons, who were interested, to have discussed. The true point then is, supposing no wages paid and no agreement, here are four days wanting in the service; and it is by means of his own act, that the servant becomes incapable of completing it. His conduct is an offence against morality and the laws, in what jurisdiction soever those laws are administered; and the consequences of it are equivalent to a wilful absence: I therefore think he did not gain a settlement. It is well put, that had an action been brought for his wages, he could not have recovered upon a *quantum meruit* for these four days.

Asbburst, J.

There is no drawing the line: if four days may be dispensed with, four months may.

in the affirmative 13 H. 7. 10. Dalt. c. 11. and 124. 1 Hawk. P. C. 132. 3 Salk. 190. In the negative, Lamb. 118. 4 Inst. 181.

Whether it is to be considered as such under the construction of St. 18 Eliz. c. 3. and thereby subjecting the offender to punishment (corporal punishment. 1 Roll. Abr. 37.) *Vide* in the affirmative, 2 Inst. 733. 3 Keble 708. Wilmot J. in the case of the King v. Allen Taylor, late Bent, E. 5 G. 3. 1765. 3 Burr. fo. 1681. In the negative, Crompton, p. 196. f. 8. Dalt. c. 11. 1 Roll. Abr. tit. Act. sur case 37. 2 Bulst. St. 343. Comb. 434. 4 Black. Comm. 65.

Whether it is to be considered at common law as of a mixed nature, not merely spiritual, but in some sort as an offence against the peace? *Vide* 27 H. 8. 14. Fitzh. and 1 H. 7. 6. Crompton. p. 196. f. 8. Lambard. 117. 119.

Buller,

Michaelmas Term 22 Geo. 3.

135

Buller, J.

There must be a service for a year, either actual or implied. Now here is no actual service; and the case affords no circumstance that will warrant an implication.

1781.

R. v. INHABITANTS OF WESTMEON.

Willes, J. concurring,

Rule absolute, the
Order of Sessions quashed, and
Order of two Justices affirmed.

Vide the case of the King v. the Inhabitants of North Cray. H. 25 G. 3. 1785. *Post*.

Rex v. Flisher, *et* Rex v. Towill.

Saturday,
Nov. 24.

TWO justices nominate and appoint *Thomas Towill* and *Nicholas Flisher* and others, overseers of the poor of the parish of *Taunton St. Mary Magdalen*, in the borough and town of *Taunton* in the county of *Somerset*. Upon the several appeals of the two respondents to the court of quarter sessions for the county, the court quash these appointments, and state the following case.

That overseers were appointed by *James Hare* and *Thomas Foy*, who claimed to be mayor and justices of the corporation of *Taunton*. On an appeal against such appointment, to the general quarter sessions of the county, the jurisdiction of the sessions was questioned by [a] the respondents upon the ground of their having, as a corporate body, an exclusive jurisdiction: in order to prove this, they produced to the court a list of names (in which number were those of *James Hare* and *Thomas Foy*) as members admitted into the body corporate, written in a book usually kept by the town clerk for such purpose, in which there were no stamps. No evidence was offered of an admission of *James Hare* and *Thomas Foy*, or of any other person claiming to be of the body corporate, upon stamped paper.

To state upon an appeal, that those against whose acts you complain are justices, is so far an admission of their jurisdiction.

[a] The parish.

Question

1781,

R. v. FLISH-
ER and R. v.
TOWILL.

Question for the opinion of the court of King's bench, whether evidence of admission upon unstamped paper ought to have been received by the sessions?

Gould and Franklin shewed cause in support of the order of sessions, quashing these appointments; and relied upon the st. 5 and 6 W. and M. [a] which requires a stamp of one shilling upon every admission to a corporation; and contended, that, to support their jurisdiction, the magistrates of the borough ought to have shewn a good title to their offices: that they had not done this upon the appeal, and consequently that their acts were void.

Wallace, Attorney-General, in support of the rule to quash the order of sessions, insisted; that this was nothing less than an attempt to try two or three *quo warrantos* at the sessions: that, by st. 43 Eliz. [b] the justices of corporate towns are authorized and required to appoint overseers within their jurisdictions: that, under St. 17. G. 2. [c] where there are not four justices in such towns corporate, and any person was aggrieved by the rate, or any part of the conduct of the overseers, he might *in such case* appeal to the county sessions; but that no other justices are in any other case to enter or meddle there [d]: that this had been adjudged in a case from this very parish, [e] the King v. St. Mary's in Taunton: that, in answer to the objection, that for want of stamps it did not legally appear that those who had made this appointment were corporate officers or justices, it was not necessary to have produced a list entered by the proper officer in the corporation book: that parole evidence of their having acted as such [f] would have been sufficient: but that it was decisive upon the question, that the appeal had been made *eo nomine* as against an order of justices: that this character therefore could not be denied them by the appellants: that therefore the appointment itself shews the appellants to be overseers, and the appeal proves the officers of the corporation to be justices; which if they were not, they had no jurisdiction, and the appeal must be void; being against their act, as an order of justices.

Lord Mansfield.

[a] c. 21. f. 3. and made perpetual by St. 9 and 10 W. 3. c. 25. f. 1. and 27.

[b] c. 2. f. 1, 8 & 10.

[c] c. 38. f. 5.

[d] 43 Eliz. c. 2. f. 8.

[e] R. 12 G. Bott. 57. and vide R. v. Folly. Tr. 27 and 28 G. 2. Bott. 26.

[f] Vide Vin. tit. Evid. A. b. 67. 4. p. 132.

There

There can be no appeal to the quarter sessions from the acts of persons, calling themselves justices and who are not so. If persons exercise a jurisdiction, who are not intitled, the whole is a nullity, and the party aimed at need not pay any regard to it.

1781.

R. v. FLISH-
ER and R. v.
TOWILL.

Willes, J.

In their notice they state them to be justices.

Buller, J. The appeal is made because the justices have appointed; upon the ground of jurisdiction: and, at the hearing of the appeal, you say, they have no jurisdiction. You have concluded yourselves.

Ashurst, J. concurring,

Rule absolute and
Order of Sessions quashed.

Vide 1 Str. 300. E. 6 G. Between the parishes of Albrighton and Skipton.

Rex v. Inhabitants of North Curry.

Saturday,
Nov. 24.

TWO justices remove *Betty Winter*, widow, and her four children from the parish of *North Curry*, in the county of *Somerset*, to the parish of *Ruishton*, in the same county. The sessions on appeal quash the order, and state the following case:

That *John Winter*, late husband of the pauper, *Betty Winter*, and father of her four children, did before his marriage duly gain a settlement in the parish of *Ruishton*, by hiring and service for three years according to the statutes in that case made and provided: that on the 25th of *September*, 1773, he intermarried with the said *Betty*, his now widow; and soon afterwards purchased a cottage and garden lying in the said parish of *North Curry* of the yearly value of 20 s. of *John Collins*, Esq; for 14 l. 14 s.: who by lease, dated the 8th of *March*, 1775, demised the same to the said *John Winter*, his executors, administrators, and assigns for the term of ninety-nine years, if the said *John Winter* and *Elizabeth*, his wife, and *James*, his brother, or any or either of them should so long live, under the yearly rent of 2 s.: that the said *John Winter* soon afterwards entered into possession of the said cottage and garden, which

Without administration, a person solely intitled to it, but in whom the whole interest does not vest for his own use, cannot by residence acquire a settlement.

T

was

1781.
 R. v. INHABITANTS OF
 NORTH
 CURRY.

was never rated to the land-tax or any parochial taxes; and he and his said wife resided therein from thence till about the 26th of *May*, 1780; when the said *John Winter* died intestate, leaving the said *Betty*, his widow, and their said four children; who soon afterwards became chargeable to the said parish of *North Curry*: but the overseers refused to relieve her, unless she would go into the work-house; whereupon she and her said children about the middle of *January* 1781, quitted the possession of the said cottage and garden, and went into the work-house of the said parish of *North Curry*, and were there relieved and maintained by that parish till the 24th of *February*, 1781; when the said order of removal was made for removing them from *North Curry* to *Ruishton*: in consequence of which all the paupers were accordingly removed to the said parish of *Ruishton*, who entered an appeal therefrom at the Easter sessions 24th of *April* 1781, which was then adjourned. The said *Betty Winter* soon afterwards returned to the said tenement and resided there till the 28th of *April* 1781; when the said cottage and garden were purchased of her by *Thomas Humphreys* of *North Curry*, aforesaid, for the residue of the said term of ninety-nine years for the sum of 6*l.* 6*s.* and no more; and by indenture dated the 28th of *April*, 1781, she assigned the same to him accordingly. After making this assignment, to wit, on the 11th day of *July*, 1781, being the day after the first day of the present sessions, the said *Betty Winter* sued out letters of administration of the goods, chattels, and effects of the said *John Winter*, her late deceased husband.

Gould shewed cause in support of the order of sessions; and stated the question to be, whether a person, having a sole right to administration, could by a residence of forty days acquire a settlement, before administration actually taken out?

Buller, J. Can you distinguish this from the case of [a] the King v. the Inhabitants of *Widworthy*?

Gould. I submit that they are different: that though there are children here, who are equally intitled with the wife (the pauper) to distribution, yet the administration *durante minori etate* can only be granted to the wife; for the children are infants: that in the case of [b] the King v. the Inhabitants of *Cold Ashton*, it is said,

[a] Tr. 10 and 11 G. 2. 1737. Burr. Settl. Cases, 109. and *Vide* Andr. 4.
 [b] H. 31 G. 2. 1758. Burr. Settl. Cases, 450.

“ there

"there is a great difference between a sole next of kin, and where several persons in equal degree have all an *equal right*: he insisted, that the difference consisted in this; that, in both cases, the claimant had an interest vested, but, in one, he had an interest vested in the specific state: that here no one had an equal right with the wife to administration; which the ordinary could not grant to any other: that in a note which he had seen of the case cited, Lord *Mansfield* had said, "that a sole next of kin is as a *cestuy que trust*: that the St. of distributions [a] vested an equitable right in such trustee, an interest transmissible to his representatives; and therefore, and as the next of kin had no interest in the thing itself, but only in the accidental share of the distribution, that the ordinary must stand in the nature of a trustee for her, who had this superior and sole right; that in situations of this sort the usual criterion is, Whether removeable or not? That here the widow, having before administration a specific right in the thing, could not be removeable: that here there was only a ceremony necessary to make the assignment to her indefeasible: that, if she could assign, her assignee was not removeable; but that the next of kin, upon whom no such interest attached on the instant of the intestate's death, were removeable: that as they could not have removed her from the tenement, though to give a colour to what they had done they had inticed her to the work-house, the law was the same, and the artifice would not avail them: that the case of [b] *South Sydenham* and *Lamerston*, and that of *Widworthy*, would be relied upon on the other side: that, in the first, though it is stated by Dr. *Burn* from Cases of Settlement, that the question had been determined against next of kin, it appeared from the same case reported in *Strange* and *Lucas*, that no opinion was given by the court upon this point: that, in the other case, the pauper was not, as here, solely intitled to administration, but jointly with his brother: that to determine the present question against the claim of the widow would be going much further than any authority had yet done; and that if the sale of this property upon the inchoate right, ratified and made complete afterwards by administration taken out, gave a legal title to the purchaser, it ought also to give a settlement to the pauper.

1781.

R. v. INHABITANTS OF NORTH CURRY.

[a] 22 and 23 Car. 2. c. 10. *Vide* Grice v. Grice in the note 3 P. Will. 50.
 [b.] Tr. 3 G. 1. Str. 57. 10 Mod. 388. Cases of Settlement, 79. From the state of the case at large in fol. 81. and Bott. 356. it appears to have been the case of a sole next of kin.

1781.
 R. v. INHABITANTS OF
 NORTH
 CURY.

Howorth and *Lawrence*, in support of the rule to quash the order of sessions, insisted; that the King v. *Widworthy* was in point: that it was there adjudged, that "an order, good when made, could not be quashed upon a matter, which happened *ex post facto*, upon an administration *afterwards* taken out" that in this case the estate was sold before letters of administration were taken out; that, admitting the distinction between a sole next of kin and many in equal degree, that which had been caught at as falling from Lord *Mansfield* in the King v. *Cold Ashton*, applied only to the case of a sole next of kin, in whom the whole vested for his own use: but that here the children were intitled to shares with the widow.

Lord *Mansfield*.

Don't lay stress upon that; for here the children are all infants, the eldest only six years old: it would otherwise be material.

Lawrence.

She has no legal estate; and to the extent of the distributive shares of her children, not being more than trustee, she has no *sole equitable* interest: that, in the case of [a] the King v. the Inhabitants of *Lower Swell, Aston*, J. then at the bar, was so clearly of opinion, that the point now argued was not tenable, that he avoided entering into it.

Gould. What is more material, the point was not touched by the court; whose judgment went upon a different ground.

Buller, J. It don't apply.

Lord *Mansfield*.

In these cases we should avoid a nicety of distinction. This is not materially different from the case of *Widworthy*. As the children were intitled to two thirds, the widow is not properly and in the sense of the cases, the sole next of kin.

Willes, J.

The widow was left in necessitous circumstances, and a fit object for removal to the poor-house. There is no pretence for imputing improper motives in so doing. The children had an interest, though they could not have administration.

Ashurst, J.

I adhere to the authority of the case of *Widworthy*, which is not shaken: for at most more has not at any time been said by the

[a] M. 31 G. 2. 1757. Burr. Settl. Cases, 436.

Michaelmas Term 22 Geo. 3.

141

court, even in the case of one solely intitled in every sense, than that such case would deserve consideration.

1781.

Buller, Justice, concurring,

R. v. INHABITANTS OF NORTH CURRY.

Rule absolute and
Order of Sessions quashed.

Vide the case of the King v. the Inhabitants of St. Michael in Bath, *ante*, 110. and also the case of the King v. the Inhabitants of Wivelingham, *ante*, 121.

Hilary Term

22 Geo. 3. 1782.

R. v. Inhabitants of the Holy Trinity in Wareham.

Saturday,
Jan. 26.

TWO justices remove *Elizabeth*, the wife of *James Sampson*, then abroad beyond sea, and their five children from the parish of Saint *James*, in the town and county of *Poole*, to the parish of the *Holy Trinity*, in *Wareham*, in the county of *Dorset*. The sessions on appeal confirm the order and state the following case :

That it was proved, that the pauper's husband was born in the of *Beer Regis*, in the county of *Dorset* : and it was also proved by the pauper, *Elizabeth Sampson*, that her husband was *abroad beyond sea*, and had been so for two years past, if alive ; that to her knowledge he lived in the capacity of an ostler with Mrs. *Lee*, of the parish of the *Holy Trinity*, in *Wareham*, some years since deceased,

Slight evidence, uncontradicted, will induce the court to presume a hiring. Hearsay evidence from a

wife of the declarations of her husband, living abroad, respecting his settlement, are admissible ; when supported by slight circumstances.

at

1782.
 R. v. INHABITANTS OF
 the Holy
 TRINITY in
 WAREHAM.

at her house there about two years, where she had seen him brew; but, whether there was any agreement or hiring relating to such service, was not proved: but that she had heard her husband say, he was settled in the parish of the *Holy Trinity*, in *Wareham*.

Howorth shewed cause in support of these orders; and insisted, that after two years service and a positive declaration by the husband, at a time when such declaration could be under no influence or suspicion, the court would presume that it had been made upon a good foundation; and consequently that the services stated had been done under a legal hiring: that in the two cases, that might be cited on the other side, the King v. the Inhabitants of [a] *Weykill*, and the King v. the Inhabitants of [b] *St. Peter's* in *Dorchester*, the fact of a hiring was expressly negatived.

Dunning and *Bond N.*, in support of the rule to quash these orders, insisted; that a hiring for a year was indispensably necessary to a settlement [c] whatever number of years of service might have passed: that in the cases, that have gone furthest, there have ever been some circumstances, though slight, from which a hiring might be inferred: that the leading circumstance here, the situation of the pauper's husband in his mistress's family, the nature and character of his service, afforded a strong argument the other way: that nothing was more notorious, than that it was not usual to hire ostlers by the year; and that, aware of this and for the purpose of letting in a possible presumption of a different species of service, the circumstance of his having been once seen to brew was introduced: but that nothing could supply the want of all evidence of a hiring; and that the King v. *Weybill* was in point.

Lord Mansfield.

The sessions have drawn their conclusion, that he was hired; and I think they have done right.

Buller, J.

Though the evidence is slight, there is nothing to contradict it.

Willes and *Ashburst*, justices, concurring.

Rule discharged and both
 Orders affirmed.

[a] H. 33 G. 2. 1760. Burr. Settl. Cases, 491. also in 1 Blackst. 206.

[b] M. 4 G. 3. 1763. Burr. Settl. Cases, 513. also in 1 Blackst. 443.

[c] St. 3 W. and M. c. 11. s. 7.

In cases, where the person under whom the pauper claimed has been *dead*, hearsay evidence, from his *widow* or from other persons, of his declarations respecting his settlement have frequently been received: *R. v. the Inhabitants of Greenwich*. M. 18 G. 2. 1744. Burr. Settl. Cases, 243. *R. v. the Inhabitants of Nutley*, E. 12 G. 3. 1772. ib. 701.; but till the present instance the court has on no occasion, (such a case has indeed been stated to them, where there has been compleat proof without it, *R. v. Inhabitants of St. Michael in Bath*. H. 13 G. 3. 1773. Burr. Settl. Cases, 731.) permitted such hearsay evidence to be received during the *life* of the person, under whom the settlement is claimed. In the first case, that of *death*, it may be well presumed, that all evidence of the settlement is lost with the person claiming it: but in the other, if he *survive*, he may return the next day and shew a different settlement in another parish. In this event, the settlement of those who have an original, and those who claim derivatively under that original settlement, must be at different places. To be sure the case of a wife will not involve this difficulty, because it has been repeatedly adjudged, (*Vide* the note in the case of the *King v. the Inhabitants of Ryton*, H. 18 G. 3. 1778. *ante*, fo. 41. and the cases therein referred to) that the removal of her in that character is legal notice to the opposite parties, that the settlement of the husband is meant to be brought in issue: but this, it is conceived, it will be impossible to contend, upon the removal of many descriptions of persons, who may chance, at the hearing of an appeal, to rest their case upon a derivative claim: consequently the original settlement, that of the individual who acquired it, must again be open to discussion, and the determination in many instances necessarily different.

Vide the case of the *King v. the Inhabitants of Norton*. H. 12 G. 2. 1738. Burr. Settl. Cases, 122. Andr. 307. Vin. Settl. of the poor. E. 8. p. 376. 2 Sess. Caf. 323. and the *King v. the Inhabitants of St. Botolph's without Bishopsgate*. H. 28 G. 2. 1755. Burr. Settl. Caf. 367.

1782.

R. v. INHABITANTS OF the Holy TRINITY in WAREHAM.

1782.

Wednesday,
Feb. 6.

Rex v. Inhabitants of Keel.

TWO justices remove *Jane Peak*, from the parish of *Bedworth*, in the county of *Warwick*, to the parish of *Keel* in the county of *Stafford*. The sessions on appeal confirm the order, and state the following case :

Pauper voluntarily leaving the parish, to which she was certificated, and, after an absence of seven years during which she is several times hired and serves for a year in the parish certifying, voluntarily returning to the same house in the parish certificated to and to a branch of the same family, with whom she had before lived under the certificate, does not thereby vacate her certificate.

That *Jane Peak*, the pauper, was born in the parish of *Bedworth*, where her father and mother resided under a regular certificate from the parish of *Keel*: that some few years after she was born, her father and mother died at *Bedworth* aforesaid, where she remained after their death, till she was about seven years of age, with her brother, who was named in the said certificate; and then voluntarily went to the said parish of *Keel*, where she remained till she was fourteen years of age; during which time she was maintained by the said parish of *Keel*, and then hired herself for a year, and served the said year and two or three others in the said parish of *Keel*; at the expiration of which last service, she returned voluntarily to the said parish of *Bedworth*, to her said brother's house, at *Bedworth* aforesaid; and was afterwards hired to one *Thomas Parker* of the said parish of *Bedworth*, for a year and served him such year in the said parish of *Bedworth*, and was then hired for and served another year with *Eusebius Holmes* in the said parish of *Bedworth*: the said certificate was produced in court, and brought from the parish church of *Bedworth*, where it remained ever since it was given.

He worth shewed cause in support of these orders; and stated the question to be, whether under the circumstances of this case the certificate was to be considered as having been abandoned? and insisted, that a certificate was an acknowledgment by the parish giving it of that solemn nature, that no voluntary absence of the pauper for whatever length of time, of itself and independent of other considerations, could avoid: that the court had in no instance holden a certificate to be deserted, in which there were not very strong circumstances, upon which to found that conclusion: that there were only three cases upon this subject: that indeed one
of

of them, [a] the King *v.* the Inhabitants of *Sowerby*, though the point was stated to the court, could hardly be so called; as the decision went upon a defect in the indenture: that in the case of [b] the King *v.* the Inhabitants of *Taunton St. Mary Magdalen*, there were a great variety of circumstances; above half a century and several generations: that in the case of [c] the King *v.* the Inhabitants of *Spotland*, where there had been an absence of several years, it had been adjudged, that "where the removal is voluntary, the certificate subsists:" and that the pauper herself certainly did not consider the certificate as vacated; for she had returned to the house, in which she had formerly lived, and in which her brother at that time continued to live, under the certificate.

1782.

R. v. INHABITANTS OF KEEL.

Dunning and *Gough*, in support of the rule to quash these orders, contended; that, though there was no case which had gone upon length of time singly, yet it had been stated by the court in the case of [d] the King *v.* the Inhabitants of *Irampton upon Severne*, that the principle of abandonment by disuse had been long established, and was to be found in the *Taunton* case: that abandonment was the sole question in the present case: that the court did by no means intend to lay it down as a rule in the *Taunton* case, that no less a period than fifty-four years [e] should be necessary to found this conclusion upon: that there was no reason why seven years should not to this purpose be equivalent to seventy: that, as to the objection of the removal not having been compulsory, it was stated, that the pauper had for the seven years of her residence there been relieved by the certifying parish; that consequently she had not been in a situation to support herself, and must, had she continued in the parish certificated to, been liable to be removed: that, it being her own act, that had rendered this impossible, her own act under such circumstances should be considered as equivalent to the act of the parish certificated to: and that an inclination to prolong the duration of certificates was inconsistent with that maxim, from which the court never departed, of leaning in favour of settlements.

Gough also insisted, that the pauper, having after her return to the certifying parish, acquired another settlement there by hiring

[a] *Vide* Tr. 29 and 30 G. 2. 1756. Burr. Settl. Cases, 408.

[b] Tr. 29 and 30 G. 2. 1756. Burr. Settl. Cases, 402.

[c] H. 5 G. 3. 1765. Burr. Settl. Cases, 527.

[d] Tr. 20 G. 3. 1780. *Ante*, 97.

[e] *Vide* the case of the King *v.* the Inhabitants of *Birdham*. H. 25 G. 3. 1785. post.

1782.
 R. v. INHABITANTS OF
 KEEL.

and service after the date of the certificate, the certificate was discharged: that the authorities indeed went only to cases of settlements acquired in third parishes [a]; but that the principle was, the acquiring of a new situation, a new settlement: that it was perfectly immaterial where, provided it was subsequent to that act, which by its legal operation it had been adjudged to avoid: and that it had been decided in the case of [b] the King v. the Inhabitants of *Sherborne*, that the St. of [c] 9 & 10 W. 3. "provides for the security of that parish *only*, into which the certificated persons come to reside by virtue of such certificate: but that it did not exclude the children of a certificated man from gaining settlements in *other* parishes in the same manner as any body else might do."

But *Dunning* admitted, that no new settlement, properly speaking, could be acquired in a parish, in which a man is before settled: and that it is not gaining a new situation, so much as it is strengthening and confirming an old one by additional titles.

Lord *Mansfield*.

The question is, whether the pauper returned to the certificated parish under the faith of the certificate? and to this point the reasoning in the case of *Frampton* is material. It strikes me that she returned independently and as *sui juris*, rather than to her old home and parish, and under the certificate.

Willes, J.

It is the misfortune of these cases, that each must stand upon its own circumstances. The enquiry here must be whether the certificate was *functus officio*? The fact is, that the pauper returns and returns *voluntarily*, to the house, in which she had before resided under the certificate, which ever since had belonged and which then belonged to her brother, who was at that time resident there under the certificate. It certainly was not discharged as to him; and there do not appear to me to be circumstances in the case sufficient to warrant us in saying, that it was so with respect to the pauper.

[a] Burr. Settl. Cases, 381. 385. 428, 429.

[b] E. 15 G. 2. 1742. Burr. Settl. Cases 182: *Vide* also the case of the King v. the Inhabitants of St. Peter's in Nottingham. E. 29 G. 2. 1756. ib. 391.

[c] c. 11. "No person, who shall come into any parish by any such certificate, shall be adjudged by any act whatsoever to have procured a legal settlement in *such* parish, unless he shall, &c. in *such* parish."

Lord

Lord Mansfield.

I am satisfied. The voluntary return to the house of her brother, who was then resident under the certificate, had escaped me.

Asbburst, J. concurring,

Rule discharged and both
Orders affirmed.

Buller, J. was absent.

1782.

R. v. INHA-
BITANTS OF
KREEL.

Rex. v. James Rodd.

Wednesday,
Feb. 6.

TWO justices allow a rate made for the relief of the poor of the borough and parish of *Bridgewater* in the county of *Somerset*.

Upon the appeal of *James Rodd*, alleging that he was aggrieved by being rated or assessed the sum of four shillings in respect of his personal property or stock in trade, within the said borough over and above what he is therein charged or assessed as occupier of his dwelling-house and shops, and that he was not liable to be rated or assessed in respect of his said stock in trade over and above his dwelling-house, shops and other real property, the sessions confirm this rate, and state the following case.

That the said borough of *Bridgewater* is an antient incorporated borough, and sends two members to parliament, who are chosen by the inhabitants of the said borough, paying scot and lot. That by the charters and constitution of the said borough there are within the said borough, a mayor, recorder, deputy recorder and two aldermen for the time being, who are the only justices of the peace in and for the said borough and parish; and the mayor and recorder or deputy recorder and one of the alderman have power to, and regularly hold the general quarter sessions of the peace in and for the said borough and parish. That within the said borough it hath been usual and customary, from the 43d year of the reign of her late majesty *Queen Elizabeth* and ever since the existence of rates for the relief of the poor, to rate and assess the inhabitants of the said borough,

An uninterrupted usage under stat. 43 Eliz. of rating stock in trade within a parish to the poor establishes, that the holders of this property are liable to be assessed for it in such parish.

1782. and amongst them such as have been of the same trade and in similar circumstances with the appellant, *James Rodd*, for and in respect of their personal property or stock in trade in the said borough towards the relief of the poor of the said borough and parish; and such inhabitants so rated and assessed for their personal property or stock in trade only, as well as other inhabitants of the said borough, rated thereto in respect of real property, have had a right to vote, and have constantly voted as inhabitants of the said borough paying scot and lot in all elections of members to serve in parliament for the said borough: that the said *James Rodd* for many years before and at the time of making the said rate was, ever since hath been, and still is, an inhabitant and substantial householder within the said borough, and was and is a butcher,, and kept and still keeps an open butcher's shop therein, carrying on his said trade of a butcher, by purchasing whilst living, and killing and selling dead, within the said borough, about the quantity of one ox or heifer and two calves and two sheep or lambs weekly, one week with another, throughout the whole year; and he pays and lays out about twenty pounds every week in the purchase of such ox or heifer, calves, sheep and lambs: that though he actually has and lays out the said sum of twenty pounds or more every week in buying such live cattle, yet as he receives the ready money and the profits in trade thereupon back again in the course of the same week or soon after by the sale thereof dead, it is but about one twenty pounds employed in the whole year, which he so turns in his said trade every week; he buying and paying for the said live cattle, killing the same soon after, and in his said shop within the said borough visibly and openly exposing to sale and selling the meat in small pieces; and also the tallow, skins, hides and other produce thereof; whereby he receives a return of the money for the same with the profits thereupon in the course of the same week or soon after as aforesaid; and by and out of the profits arising from this trade the said *James Rodd* maintains himself and his family, pays all his necessary expences and still keeps and preserves his capital in manner aforesaid. That by the said rate, being one of five rates made for the relief of the poor of the said borough and parish in the said year 1781, the said *James Rodd* is rated and assessed the sum of four shillings as his share or contribution towards the relief of the poor of the said borough and parish, in respect of his stock in trade or personal property

1782. 5 Burr: 2634. and Tr. 17 G. 3. 1777. *Rex v. Francis Hill*. Cowp. fo. 618.: though a late learned judge has delivered his opinion, "that if the thing were practicable, if the fact were fairly stated upon an appeal, the general question of the liability of personal property might there be discussed." *Aston*, J. in *Rex v. the churchwardens of Andover*. H. 17 G. 3. 1777. Cowp. fo. 565.

R. v. JAMES
RODD.

Certainly the *general bearing of the authorities*, till a very modern period at least, strongly favours the affirmative of the proposition upon the question at large: since that period to be sure doubts have been started; the question has frequently and in various shapes been agitated, and the *principle* of these authorities has undergone very solemn and elaborate discussion, with some difference of opinion. It is, however, equally certain, that the *general practice or usage* down to the present hour is as strongly in favour of the negative of this proposition; and upon this it is that the principal arguments on that side of the question have been founded.

In support of it, it has been urged, that there exists no single authority in which, contrary to the usage, [a] this species of property has ever yet been rated; that the fact of this species of property not having been made the subject of charge at the time of passing the act of 43 Eliz. or in either of the two subsequent reigns, (the period of the first great extension of our commerce and consequent increase of personal property) must be taken as a contemporary exposition; and that the immense amount of this property in succeeding times, created such an interest in the holder of every other species of property, that it was not possible that it could for near two centuries have been generally overlooked under any other idea, than that it was not a legal object of taxation.

In answer to these arguments it has been insisted, independent of the series of authorities, that for many years after the passing of this law and during the two reigns immediately subsequent, personal property had not become throughout the kingdom an object of such serious regard; that the influx of wealth through the medium of commerce would not shew itself in its influence upon the habits and modes of life in a progress so rapid as had been suggested; and that, if the internal commotions of this country had not for near half of that period proved an effectual obstacle to such a change of manners, a change so material, as to alter the state of

[a] Sed vide the case of the poor of *Wickham*. M. 27 Car. 2. 1675. *Freem.* 419.

visible property throughout the realm, could not in the natural course of things have been expected till the period about which it actually happened, the reign of *Charles the Second*; but that the *ability* of the trader to pay, (which upon the whole of the question was the only true criterion,) was not here, and in this particular view of the subject, the true or fair point in which it ought to be considered; that the only true interpretation of the acts of our ancestors must be drawn, not from the refinements of speculation, but from what came home to them, from the burthens they actually and in practice felt; that the enormous amount of the contributions now levied in support of the poor was of very modern date, not much earlier than the æra of the doubts that had been lately started upon the subject, and utterly unknown to our ancestors in the last century. Viner's Abr. Tit. Poor. 426. H. 5 Ann. 1706. in the note to the case of the *Q. v. the Inhabitants of Barking of Needham*; that the landed interest therefore of those times not feeling the pressure of that grievance, which has since grown almost intolerable, were not so active as they otherwise might have been, and did not attempt to throw upon the shoulders of others *part* of that, which *altogether* they found no weight upon their own: that "who was liable to be assessed" was an inquiry, which probably to this hour had never been made, if "what that assessment amounted to" had continued to be a matter of indifference to those who paid it; and that whether this be so or not, on whatever foundation the usage may be supposed to have stood, *Aston, J.* in the *Andover* case above cited, had laid that consideration entirely out of the case; "for, *notwithstanding the usage*, if upon the general question, which they are now aiming at, it should turn out to be the law that personal property is rateable, if that is the law, it must be rated *then, though it never was before.*" Cowp. fo. 565.

That it had also been asked on this side of the question, as the court had in several instances and as a matter of course, confirmed all rates of such personal property in all places where it appeared *usually* to have been assessed, upon what other principle could this have possibly been done than that of *all* personal property being subject to such charge by the general law? that it must have been so; for that on no other foundation could personal property, *so circumstanced*, be made liable: that it was not in the power of parishes merely by continuing one mode of assessment from one generation to another to subject any individual of the next generation

1782.

R. v. JAMES
RODD.

to

1782. to the necessity of adopting it : that such a course of proceeding could be no more than private contract ; matter of personal agreement and accommodation : temporary and not of any permanent obligation : that nothing could be the foundation of a legal usage, which had not a legal origin ; and that a parish could then only make a valid bye law, when it was as well *for the better execution of the subsisting laws* as for the furtherance of the public good. That as, on the other hand, the minds of men would have been by a decision against the rateability of this property at once quieted, sources of litigation infinite as the various branches and combinations of traffic would have been done away, and a waste of expence from time to time monstrous in its amount would have been saved to the public, it was not easy to suggest why so much caution and reserve should have attended the deliberations of the court upon this subject, if the exemption contended for could have been supported.

R. v. JAMES
RODD.

To the arguments *ab inconvenienti* and the difficulties started as to the mode of levying this assessment, it was answered, that, as no such difficulties had occurred at the time when subsidies, to which the land-tax succeeded, were levied, and as this tax was now actually raised in many of the most populous and trading towns [a] in the kingdom, it was supposing an objection contrary both to the evidence of history and the experience of the present hour.

But leaving *the principle* of this important controversy where I found it, it seems to belong to the plan of this work to deduce the history of *the decisions* that fall within the period comprised in this volume, and which could not be published at large without interfering with the labours of those who have already given a complete view of them : and in doing this it will be useful to the country magistrate at least, and is in itself in some degree necessary, to review the whole.

It seems, that no *persons* whatsoever or at least no *subjects* are, in respect of their landed property, so privileged as to be exempt from this contribution.

Neither are any *places* exempted, unless as being appropriated to some public, or charitable, or religious purposes : for it has been adjudged, that a *Bishop's palace* is not protected, nor will any prescription exempt it. H. 27 Car. 2. 1675. The parish of *Sub-deanry* against the mayor of *Cbichester*. 3 Keb. 572. It is upon the ground of their being extraparochial only, that most of the *old colleges* are exempt ; and the charitable purposes of those institutions,

[a] Lynne, Norwich, Frome, Trowbridge, Warminster, Bewdley, Blandford, in many parishes of London, and particularly Whitechapel.

it is conceived, were in some degree the consideration, that, in the case of these foundations, induced the court, after an immemorial enjoyment of the exemption, to favour this presumption: Tr. 14 G. 3. 1774. *R. v. Gardner*, Cowp. fo. 84; and it might be supposed to have been upon this or some such principle, that even the royal palaces are exempt; for lands, newly taken in and added within time of memory to premises in the actual occupation of the crown, are in some instances rated: H. 17 G. 3. 1777. *Rex v. Mathews*, ante, p. 1.; though it rather seems, that the King, not being named in the St. 43 *Eliz.* cannot be subjected to any of its provisions: and indeed the principle in this case seems to be more extensive, and not to depend upon any of those maxims, that serve for the regulation of private property: for, when the public purposes, which constitute the great ground of exemption, are no longer answered, they no longer retain this privilege; and it has been ruled, that when they are demised to a subject for any permanent interest, they are liable to be assessed: the Duke of *Portland v. the parish of St. Margaret, Westminster*, at *Nisi Prius* after H. T. 33 G. 2. *Wynne's Analysis* of the law concerning parochial provision for the poor, 1767. p. 60. ante, p. 3. in note [a]. The true ground, upon which *hospitals* are exempted, appears, from what is said of the principle of the decision of the King *v. the Inhabitants of St. Bartholomew's the Less*, Tr. 9 G. 3. 1769. in Cowp. fo. 83., to be their appropriation to charitable purposes: (*hospital lands* indeed, as throwing otherwise too large a proportion of parochial burthens upon the other parts of the parish, have not been considered as intitled to this exemption. Anonymus, E. 1 Ann. 2 Salk. 527.) Upon a similar principle in the case of the King *v. Peter Waldo*. Tr. 23 G. 3. 1783. *post. a house; built and applied to the purpose of educating poor girls and qualifying them for services*, was holden not liable. But, where a profit arises, of whatever nature the institution be, the party benefited shall, in proportion to the advantage he derives, be assessed to the poor: and, though it has been holden long since, H. 13 G. 2. *Dominus Rex verjus inhabitantes St. Thomas in Southwark*. 2 Str. 745. Settl. Cases 120. 2 Sess. Cases, 58., upon the principle of the interest which the public has in every religious institution, that a *conventicle*, in which no profit was made of the pews, was not liable, yet it has been lately adjudged, agreeable to the spirit of the above decision, that a building, demised for a term, under the name of a chapel and to be used solely for the purposes of religion, but with a rent reserved, was liable. Tr. 23 G. 3. 1783. *Robson v. Hyde, post.* Though the court in some of the above cases ap-

1782.

R. v. JAMES
RODD.

1782.
 R. v. JAMES
 RODD.

pears to have adverted principally to the end and object of the institutions themselves, they seem in general, and it is perhaps the true view of the subject, to have considered, that all real property, *of which an occupier can be found*, is rateable, *R. v. Gardner*, Cowp. 79. : and, where a profit has arisen, and the other circumstances have warranted it, they have even considered a keeper of a prison, as such, liable. *Rex v. Eyles*, warden of the *Fleet*. H. 24 G. 3, 1784. *post*.

The same measure seems to have guided the discretion of the court with respect to *the officers* of all these *eleemosynary foundations*; and consequently such of their necessary agents as derive from their lodging and salaries a mere support, and may in fair and sound construction be considered as partaking of that charity to which they are strictly no more than assistants, have never yet been adjudged objects of taxation. *Rex v. Occupiers of St. Luke's Hospital*. M. 1 G. 3. 1760. 2 Burr. fo. 1064. 1 Blackst. 249. *Rex v. Inhabitants of St. Bartholomew's the Less*. Tr. 9 G. 3. 1769. 4 Burr. 2435. Bott. 48. : but in the case of apartments, though without salaries annexed, built upon a scale equal to the occasions and situations in life of superior officers, and occupied separately and with families, the court has considered the holders of such property as not intitled to exemption; though their personal attendance is indispensably necessary to these institutions, and their residence is *bona fide*. M. 1 G. 3. 1760. *Rex v. occupiers of St. Luke's Hospital*. 2 Burr. 1053. 1 Blackst. 249. *Eyre v. Smalpace & al.* E. 23 G. 2. 1750. 2 Burr. fo. 1059. Bott. 39. And indeed *salaries* in general, as in the case of an officer of the salt works, are not considered as liable, being "a particular species of property, not within the words or meaning of the act, and not personal property; which is the surplus of a man's estate and effects after payment of debts, the maintenance of his family and necessary expences." *R. v. the Inhabitants of Shalfleet*; *Sherrington's case*. H. 7 G. 3. 1767. 4 Burr. 2011. Bott. 46.

With respect to *rents and profits*, *ground rents* have been adjudged to be liable. M. 3 Jac. 2 Comb. 62. Whether *quit rents* were liable appears to have been unsettled in M. 3 Jac. *Hull's Case*. Carth. 14. : & in Tr. 6 W. & M., tho' there had been one adjudication that they were liable, different opinions were entertained upon the subject. Comb. 264. But that *these and the casual profits of manors* are not liable has been determined in the case of the *K. v. Vandewall*, Esq. E. 33 G. 2. 1760. 2 Burr. 991. 1 Blackst. 212. And yet no other arguments appear to have been used in the judgment upon that case,
 but

but those drawn from usage and *ab inconvenienti*; and, though *the Cheltenham Spa*, *Rex v. Miller*. Tr. 17 G. 3. 1777. Cowp. 619. was not adjudged to be liable *eo nomine* as profits, but collaterally only, and *alio nomine*, (the spring being considered as part of the produce of the land), yet in *Rowls v. Gell & al.* E. 16 G. 3. Cowp. 451. the profits of lead mines, which are themselves not liable. Governor and Company for smelting down lead, &c. v. *Rhcardson*, Esq. and others. M. 3 G. 3. 1762. 3 Burr. 1341. 1 Blackst. 389.) were holden liable in the hands of the lessee of the crown; he letting them again to the adventurer, and, without any risk to himself, receiving a stipulated proportion of the accidental profits or value. The toll also of markets, though against an immemorial usage, has been adjudged to be liable. The case of the poor of *Wickham*. M. 27 Car. 2. 1675. Freem. 419. Nelson's Edit. of Dalt. 1727. c. 73. p. 218. 3 Keb. 540.; and from the case of the *King v. Brograve*. M. 10 G. 3. 1770. 4 Burr. 2491. Bott. 31. the law seems to have been admitted to have been the same as to the toll of fairs. The toll of sluices on navigable rivers is also liable. *Rex v. Inhabitants of Cardington*, E. 17 G. 3. 1777. Cowp. 581.; as the toll of lighthouses, if it arises within the parish, is, *King v. Rebow*, Esq. M. 12 G. 3. 1772. Bott. 384. Cowp. fo. 583. The profits of a weighing machine, belonging to the corporation of Gloucester, were also holden liable. E. 23 G. 3. 1783. *Rex v. Inhabitants of St. Nicholas, Gloucester, Post*. A question has also been before the court, but has received no decision, upon that species of profit, which is called the *herbage and pannage of a forest*; which is the surplusage above the sufficient pasture of the game therein. The form indeed of the assessment was upon the lodge and lawn; but from thence it seems that, as far as the form applies, this case falls within the authority of that of the *Cheltenham Spa*; where the court held, that, that not being a rate upon the profits, but upon four acres of land, and the value arising partly from the buildings and partly from the spring, the profits of the spring are part of the produce of the land, and as such clearly liable. And, as far as the authority of the case in *Keble* might serve to remove difficulties, the authority of *Freeman* and the concurrent testimony of *Nelson's* edition of *Dalton*, together with the immemorial usage of the place, as stated in *Douglas* fo. 292. seem to establish that point. *Jones v. Maunsell*, M. 20 G. 3. 1779. *Douglas* 289. The last question of this sort, and which underwent very solemn discussion, arose on the subject of the profits of the London water-works. It had been twice argued

1782.

R. v. JAMES
RODD.

1782. argued in the court of King's Bench, and that court being divided in opinion, judgment by consent was taken for the plaintiff, for the purpose of removing it in course of appeal to the court of Exchequer Chamber. The question, as stated in favour of the exemption, was, whether projects of very hazardous adventure, requiring in the first instance a vast capital, and continually in every subsequent stage subject to very heavy expences and losses, were, contrary to all usage, fit objects of taxation? But the court of Exchequer chamber gave judgment upon another ground; and, it being an action of trespass upon a distress taken under 1 G. 1. st. 2. c. 5., commonly called the Riot Act, in which the damages recovered are directed to be levied on the inhabitants of the hundred in the manner prescribed by the St. 27 Eliz. c. 13. in case of actions against the hundred by persons robbed, they held; that under the construction of *that act*, which speaks of ability generally, without specifying, as the St. 43 Eliz. does, any particular taxable object, (and this last act not being at all referred to) all persons having taxable property within the district assessed were inhabitants, and as such liable. *Davis & al. v. Atkins & al.* M. 25 G. 3. 1784. *Vide* Tr. 23 G. 3. 1783. *post*.

There are not wanting authorities of a recent as well as a more early date to shew, that *stock in trade in general* is rateable to the poor: but there is no clear and express authority, either of more antient or modern times, in the instance of any one trade, adjudging the stock in that particular trade to be liable: except in those places in which an usage to assess such stock has been proved: though in many boroughs the stock in all trades has, immemorially and even from the very date of the St. 43 *Eliz.*, been in point of fact rated.

Saturday,
Feb. 9.

Rex v. Morgan.

Justices either of the county from which tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders in their respective counties. Unless facts are stated to make the contrary appear, the court always presumes in favour of the acts of inferior jurisdictions.

UNDER the Stat. 11 G. 2. c. 19; [a] for the more effectual securing the payment of rents and preventing frauds by tenants, two justices of the county of *Hereford*, reciting that *John Morris*

(a) If any tenant or lessee for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements or hereditaments, upon the demise or holding whereof any rent

Morris of Llanbeder Painscastle, in the county of *Radnor*, had fraudulently and clandestinely removed and conveyed away certain goods and chattels not exceeding the value of fifty pounds from off the farm of *Painscastle, &c.* to prevent his landlord or his agent from distraining for rent, &c. and also that *John Morgan of Michael Cburb* in the county of *Hereford*, had knowingly and wilfully aided and assisted the said *John Morris* and his servants in concealing and secreting the said goods and chattels at *Michael Cburb, &c.* of the value of twenty one pounds; and that they the said justices had in the presence of the said *John Morris* and *John Morgan* examined the fact and all proper witnesses upon oath, and that it was fully proved before them that the said *John Morgan* was guilty, &c. convict him of this offence; and order him to pay forty-two pounds, being double the value of the said goods or chattels to the landlord or his agent.

1782.
R. v. MOR-
GAN.

It had been objected at the sessions, that, it appearing upon the face of the conviction, that it had been made by two justices of the county, in which the goods were found, and not of the county from whence they were removed, that court, upon the ground of a defect of jurisdiction and that the justices of one county could have no cognizance of a matter arising in another, quashed the conviction.

These proceedings being now removed by *certiorari*, *Dunning* and *Phillips*, in support of the order of sessions, contended, that

rent is or shall be reserved, due or made payable, shall fraudulently remove and convey away his or her goods or chattels to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person and persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her, or them respectively carried off or concealed as aforesaid to be recovered, &c. f. 1. and 3.

Provided, that where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of fifty pounds, it shall and may be lawful for the landlord or landlords, from whose estate such goods or chattels were removed, his, her, or their bailiff, servant, or agent in his, her, or their behalf, to exhibit a complaint in writing against such offender or offenders, before two or more justices of the peace of the same county, riding, or division of such county, residing near the place whence such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact and all proper witnesses upon oath, or, if any such witnesses be one of the people called quakers, upon affirmation required by law; and in a summary way determine, whether such person or persons be guilty of the offence, with which he or they are charged; and to enquire in like manner of the value of the goods and chattels by him, her or them respectively so fraudulently carried off or concealed as aforesaid; and, upon full proof of the offence, by order under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords, his her, or their bailiff, servant or agent, at such time as the said justices shall appoint. f. 4.

the

1782.
R. v. MOR-
GAN.

the legislature had confined the exercise of this authority to the justices of the county within which the offence originated; and cited the case of [a] *Talbot v. Hubble*, to shew, that the circumstance of residing near the place, &c. does not give a jurisdiction, which the justices would not have without it.

But *Willes*, J. intimated, and it seemed to be agreed by the court, that the Stat. gave an authority to the justices of the respective counties; within which either offence under this act was proved to have been committed.

But the court thought, that the conviction was bad on another ground; as no evidence was stated in it. And, as no special case was returned, they held, that it must be taken, that the conviction was quashed at the sessions for that defect; for that the law presumes, that an inferior jurisdiction acts rightly, unless the contrary appears: and *Howorth*, who was to have supported the rule to quash the order of sessions, admitted, that this objection was fatal.

Per curiam,

Rule discharged and
Order of Sessions, quashing the
conviction, affirmed.

[a] Tr. 14 G. 2. 1751. 2 Str. 1154.

Saturday,
Feb. 9.

Rex v. Inhabitants of St. Paul, Covent Garden.

The sessions
have no power
to vary the
proportions,
in which the
county rate
has usually
been assessed
on the several
parishes.

THE court of quarter sessions for the county of *Middlesex*, under the St. 12 G. 2. c. 29. assess the parish of *St. Paul, Covent Garden*, at the sum of 69 l. 5 s. 7 d. $\frac{1}{2}$ as their proportion towards the general county rate. Upon the appeal of the parish to [a] the next general sessions, alleging that their assessment was unequal and unjust, the sessions confirm the rate, and state the following case:

Middlesex.

At a general session of the peace, &c. holden for the county of *Middlesex*, at *Hicks Hall*, in *St. John-street*, in the same county, on *Tuesday* the 29th day of *May*, in the twenty-first year, &c. and

[a] S. 12.

from

from thence continued, &c. until this day to wit, *Thursday*, the 31st day of the same month of *May*, and on the same *Thursday*, holden by adjournment aforesaid, at *Hicks Hall* aforesaid, before *William Mainwaring Esq*; &c.

1782.

R. v. INHA-
BITANTS OF
ST. PAUL,
COVENT
GARDEN.

Whereas, at the general session of the peace begun and holden for the said county, &c. on *Tuesday*, the 18th day of *May*, in the nineteenth year, &c. and from thence continued, &c. and holden on *Thursday* the 20th day of *May*, &c. before Sir *John Hawkins*, Knt. &c. the churchwardens and overseers of the poor of the parish of *St. Paul, Covent Garden*, within the liberty of *Westminster*, exhibited to the justices of our said Lord the King last above mentioned, their petition and appeal setting forth, that the said parish of *St. Paul, Covent Garden*, is charged to the county rate which was made at the general session of the peace, holden, &c. on *Thursday* the 18th day of *February* last, with the sum of 69 *l.* 5 *s.* 7 *d.* $\frac{1}{4}$.; although the annual rents or value of the lands and tenements, therein charged or assessed to the poor's rate, do not amount to the sum of 32,000 *l.*; and that the parish of *St. Mary le bone* in the said county of *Middlesex*, was assessed to the same county rate the sum of 7 *l.* 5 *s.* 10 *d.*, only: although the annual rents or value of the lands and tenements in that parish charged with the poor's rate amounted to 140,000 *l.* or thereabouts: wherefore the petitioners, conceiving the said county rate so made upon them as aforesaid to be unequal, declared themselves grievously oppressed thereby, and did appeal against such part of the said rate, as did then and yet does affect the said parish of *St. Paul, Covent Garden*, praying relief in the premises: which said appeal stood duly adjourned until the then next general quarter session of the peace, to be holden for the said county; to wit, the general quarter session, &c. holden on *Thursday*, the 8th day of *July*, in the same nineteenth year, &c. before Sir *John Hawkins*, &c.: at which said general quarter session, &c. upon hearing the said appeal and what was alleged by the churchwardens and overseers of the poor of the parish of *St. Paul, Covent Garden* and their counsel, it appeared to the court, that the allegations, contained in their said petition and appeal, were true; but the court, having considered thereof and conceiving that they were not authorised by the statute passed in the 12th year of the reign of his late Majesty King George the Second, or by any other law to vary the proportions of the county rate, as it hath continued in its present form ever since the year 1739, did therefore dismiss the said appeal, and the said appeal was thereby dismissed accordingly: whereupon,

1782.
 R. v. INHABITANTS OF
 ST. PAUL,
 COVENT
 GARDEN.

whereupon, afterwards, to wit, on the 3d day of *December*, 1779, his Majesty's writ of *certiorari*, dated on the 29th day of *November*, in the 20th year of his present Majesty's reign, was brought for the removal of all and singular the orders made at the general quarter session of the peace holden in and for the said county on *Thursday* the 8th day of *July* then last, on appeal of the Inhabitants of the parish of *St. Paul, Covent Garden*, against a certain rate made for the said county, into his Majesty's court of King's Bench; which said order was returned into the court of King's Bench accordingly; and whereas in *Hilary* Term in the 20th year of the reign of king *George the third*, the matter of the said petition and appeal coming on before the said court, it was ordered, that the said order should be sent back to the sessions to be re-stated, and that on the 11th. of *February* following the said order was returned to the sessions accordingly; now in obedience to the said rule this court, having searched into and inspected the records of the sessions of the peace for this county and the several acts of parliament respecting county rates, it appears, that by virtue of an act of parliament made and passed in the 12th year of the late King *George the Second*, entitled, "an act for the more easy asselling, collecting, and levying of county rates," Justices of the peace in that part of *Great Britain* called *England*, within the respective limits of their commissions at their general or quarter sessions, or the greater part of them then and there assembled, have full power and authority *from time to time* to make one general rate or assessment for such sum or sums of money as they in their discretion shall think sufficient to answer all and every the ends and purposes of several acts of parliament in the said act recited, instead and in lieu of the several separate and distinct rates directed by the said recited acts to be made, levied, and collected; which rate is to be assessed upon every town, parish, or place within the respective limits of their commissions, *in such proportions as any of the rates thencefore made in pursuance of the said several recited acts had usually been assessed*. And by the said act there is to be but one rate made and assessed, by the justices of the peace for the county of *Middlesex* in the said county and the city and liberty of *Westminster*, for the several purposes therein mentioned.

That by an act of parliament of the 22d of *Henry the eighth*, entitled, "for bridges and highways," (one of the acts recited in the act abovementioned,) justices of the peace, for the repair of decayed bridges in the highways, where it could not be known and
 proved

proved what persons ought to make and repair such bridges, with the assistance and assent of the constables of the county, or two of the most honest inhabitants in every parish of the county, had power and authority to tax and set every inhabitant within the limits of their commissions and authorities, to such reasonable aid and sum of money, as they should think by their discretion convenient and sufficient for the repairing, re-edifying, and amendment of such bridges; which act of parliament also requires, that the justices should cause the names and sums of every particular person so by them taxed to be written in a roll indented, but no such rolls are at this time to be found amongst the records of the sessions of the peace for this county; the entries of such taxations previous to the year 1695, being for the gross sum required, and not exhibiting the specific assessment on particular parishes. That in the said year 1695, a rate for 459 *l.* 6 *s.* 6 *d.* was made upon the whole county for repairing *Chertsey* and other county bridges, and, the gross assessment upon each parish being set down, the parish of *St. Paul's Covent Garden*, was charged 5 *l.* and the parish of *St. Mary le Bone* 2 *l.* 12 *s.* 2 *d.*

And it further appears to this court, that by an act of parliament of the 1st of *Ann*: St. 1. c. 18. entitled "An act to explain and alter the act made in the 22d year of king *Henry* the 8th, concerning repairing and amending bridges in the highway," (another of the statutes recited in the 12th of the late king,) justices of the peace had full power and authority to assess upon every town, parish, or place within their respective commissions, in proportions upon each respective town and parish, as they had been usually assessed towards the repair of bridges: that the first assessment under this statute was in the year 1709, and that the amount thereof was the sum of 600 *l.*; which assessment was made for the purpose of repairing a county bridge, called *Chertsey* bridge, and that in the said assessment the parish of *St. Paul Covent Garden*, is charged 15 *l.* 4 *s.* 0 *d.* $\frac{1}{2}$ and the parish of *St. Mary le Bone*, 2 *l.* 3 *s.* 10 *d.* $\frac{1}{2}$ and in the like proportions in the several rates made for the repairs of bridges since that time to the 12th of the late king *George* the Second.

And it further appears to this court, that by the statute of the 43d. of *Eliz* entitled, "an act for the relief of the poor," (another of the acts recited in the act of the 12th of the late king) (justices of the peace of every county are directed to rate every parish to such a weekly sum of money as they should think convenient, so as no parish should be rated above the sum of 6d. nor under the sum of

Y

a half-

1782.

R. V. INHABITANTS OF
ST. PAUL,
COVENT
GARDEN.

1782.

R. v. INHABITANTS OF
ST. PAUL,
COVENT
GARDEN.

a halfpenny, weekly to be paid, and so as the total sum of such taxation of the parishes in every county did not amount to above the rate of 2d. for every parish within the said county; which sums so taxed were to be yearly assessed by the agreement of the parishioners within themselves; or in default thereof by the churchwardens and petty constables of the same parish, or the more part of them; or in default of their agreement, by the order of such justice or justices of the peace as should dwell in the same parish, or (if none should be there dwelling) in the parts next adjoining; the money so raised to be applied to the relief of the poor prisoners of the King's Bench and Marshalsea, and also of such hospitals and almshouses as should be in the said county. That in the first rate under the above statute appearing among the records of this country, the parish of *St. Paul Covent Garden*, is charged 6d. *per* week, and the parishes of *Mary le Bone* and *Paddington* are jointly taxed at 3d. *per* week, and in like proportions in every rate for the like purposes made by the justices under the said act of parliament.

And it further appears to this court, that by the statute of the 11th and 12th of *William III.* c. 19. entitled "An act to enable justices of the peace to build and repair gaols in their respective counties," (another of the said recited acts) justices of the peace were authorized within the limits of their commissions by warrant under their hands and seals, by equal proportions to distribute and charge the sum or sums of money to be levied for the building, finishing or repairing the public gaol or gaols belonging to the county upon the several hundreds &c. of the said county, &c.: that four rates appear to have been made under this act of parliament; all which rates adopt as their standard the bridge rate of 1709: the fourth was removed by a writ of *certiorari* into the court of King's Bench, and there quashed upon exceptions: the exceptions do not appear upon record, but were, it is presumed, on account of the express exclusion of the city and liberty of *Westminster*, and the liberty of the *Tower* out of such rate.

And it further appears to this court, that, by an act of the 11th and 12th of *William III.* entitled "An act for the more effectual punishment of vagrants and sending them where by law they ought to be sent," (another of the acts recited in the 12th of the late king) the expences incurred in executing the act were to be defrayed out of the gaol and Marshalsea money; which act was continued for three years by an act passed in the 1st. of *Ann*; and by an act

act of the 5th of *Ann*, c. 32. entitled "an act for the continuance of the laws for the punishment of vagrants, and for making such laws more effectual," the said act of the 11th and 12th of *William* III. was continued for seven years, and the justices were by the said statute of the 5th of *Ann*, empowered to assess upon every town, parish or place within their commissions such sum and sums of money as they in their discretion should think reasonable for satisfaction of the allowances made to constables and others for their loss of time and expences in passing of vagrants; and that the money so assessed should be levied and collected according to the rules and methods prescribed by an act of parliament then in force for the levying and collecting of money for the repair of county bridges: the first rate appearing to have been made by the justices for *Middlesex* under the statute of *William* last above mentioned was made in July 1700, for 43 l. 4 s. 6 d. wherein *St. Paul Covent Garden* is assessed 1 l. 6 s. 0 d. and the parishes of *Mary le Bone* and *Paddington* together at 13 s. That in January 1701, another rate was made under the same statute for the sum of 303 l. 3 s. 10 d. in which *St. Paul Covent Garden* is charged 8 l. the parish of *St. Mary le Bone* 2 l. the parish of *Paddington* 1 l. 10 s. and the parish of *St. Ann*, 8 l. That in October 1702, a rate was made for the sum of 154 l. 12 s. 2 d.; in which *St. Paul Covent Garden* is charged 4 l. the parish of *St. Ann*, 4 l. and that of *St. Mary le Bone* 1 l.; the like proportions as the last: and in April 1703, another for 492 l. 15 s. in which *St. Paul Covent Garden* is assessed 16 l. and *Mary le Bone* 3 l. and in the next 1704, another for 400 l. in which *St. Paul Covent Garden* was charged 9 l. 19 s. 7 d., *St. Ann's* 13 l. 15 s. 9 d. and *Mary le Bone* 1 l. 9 s. In the year 1705, the whole amount of the rate was 400 l. 1 s. 6 d.; but the sums charged on each of the *Westminster* parishes in that year, vary from the sums charged in the last year; although the variations in the respective instances are not great. Between the year 1705, and the 12th of *George* II. fourteen rates were made for the like purposes upon the same proportions, as that last above mentioned.

And it further appears to this court, that in the year 1739, that is to say, in the 12th year of the late king, the county rate act passed, and that in the same year a general rate was made upon the county of *Middlesex* by virtue thereof, wherein the like proportions were observed as in the last rates, that were respectively made for repairing bridges, passing vagrants, and repairing gaols; and since the year 1705, the same proportions have been observed in the se-

1782.

R. v. INHABITANTS OF
ST. PAUL,
COVENT
GARDEN.

1782.

R. v. INHA-
BITANTS OF
ST. PAUL,
COVENT
GARDEN.

veral rates made under the said act of parliament to the present time.

And it further appears to this court, that, since the beginning of the reign of *James II.* 1685, several distinct parts of the parish of *St. Martin* in the *Fields*, have been separated from the said parish, and constituted distinct and several parishes, viz. *St. Paul Covent Garden*, *St. Ann*, *St. James*, *St. George Hanover Square*; but that the proportions, rated upon each parish, in the several rates before mentioned (excepting those for the relief of poor prisoners, &c. under the 43. *Eliz.*) not being ascertained by any of the records of this court, previous to the year 1694, which was about the eight year of the subsequent reign, it cannot be discovered what alterations the justices made upon these separations: and that with respect to the poor of *St. George Hanover Square*, the same having been constituted a parish in 1724, the parish of *St. Martin* in the *Fields*, since that time, hath been abated one-third in the proportion theretofore usually laid upon the said parish; which third has been charged upon and paid by the parish of *St. George*. Now in regard there has been no variation in the proportions rated upon each parish in any of the rates levied upon the country since the year 1709, and by the statute 12 *Geo. II.* 1739 the justices are restrained in making of county rates to such proportions, as any of the rates thentofore made had been usually assessed; and the first county rate after that statute having been made according to the proportions observed at the time of passing the said act, and which have never been varied from that to the present time, this court is of opinion, they have no power to vary the proportions in which the county rate is now assessed on the several parishes within the same.

Bearcroft and *Davenport* shewed cause in support of these orders of sessions; and insisted, that nothing more was necessary on their part than to read the case stated, which would sufficiently shew, that there had been no alteration in the rate since the statute was made; nor indeed was the rate then adopted, a new one, but the bridge rate, as it had existed from 1705: that this usage, coupled with the words of the statute, was conclusive against the power of the magistrates, whatever the circumstances of the case might be: and that the words "from time to time," applied, not to a change of the proportions, but to the power of raising competent sums whenever they should be wanted.

Lord *Mansfield* now called upon the other side, (*Wallace*, Attorney-General, *Howorth*, *Dunning*, and *Lane* were in support of the rule

rule to quash these orders) and added, that, after the case in [a] Lord Ch. Baron *Parker's* Reports, the existence of a discretionary power in the justices was too much to contend for; as the court, unless that case was distinguished from the present, must, consider it as conclusive.

1782.

R. v. INHABITANTS OF ST. PAUL, COVENT GARDEN.

Lane, (the other counsel not being then in court) insisted, that, they were distinguishable: that the case cited was a case upon the land tax acts: that by those acts originally the justices had the powers in question, and under them uniformly exercised a discretion over the proportions down to the St. 10 and 11 W. 3.: that in that act [b] the legislature thought fit to restrict them to the proportions adopted under the act of 4 W. & M.: that the language of the present act being as general, and the powers given in it as ample as in any of the former land-tax acts, and no subsequent statute having here, as it had in those cases, restrained the exercise of those powers, the discretion of the justices might still act upon this subject, and had not been taken away: that the words of reference in this act, are so very comprehensive, as expressly and in terms to include any of the modes of rating adopted under the antecedent acts; which appear from the case stated to have been in several instances varied, as circumstances required; and therefore that the reason of giving the appeal must have been for the purpose of varying these proportions: that, even under the land-tax act [c] particular contributory divisions may to some extent be eaded, where, different proportions have been charged, by reducing the charge imposed upon some, and making good the deficiency by adding to that of others: and that in this view nothing could be stronger than the equitable claim of relief by the parish of *Covent Garden*; which paid 20*l.*, when the parish of *Marybone*, which ought to contribute 100*l.*, paid only two guineas.

Lord *Mansfield*.


There is great hardship in this case: but the point is settled by the authority in *Parker*, and we can give no relief. The divisions of the land-tax were settled in 1694. By the increase of the metropolis it happened that a great quantity of land in *Westminster*

[a] Concerning the commissioners of the land-tax for the city and liberties of Westminster, and offices executed in Westminster Hall, in the year 1745. Park. 74.

[b] Fo. 154.

[c] Fo. 206.

has

1782.  has since been built upon: but the act having laid the tax upon the division, the division is no further liable than before. In this case to be sure the subject is different; but the reason is the same in both. By this act county rates are to be collected in the same manner, as rates have been *usually* collected in the several districts; upon parishes *eo nomine* and not upon individuals. We have no authority to alter this proportion; notwithstanding change of circumstances, and though convinced that the equity of the case is with the appellants. As to what is said of the justices discretionary power, it is applicable to the *time when*, and not the *mode how*.

R. v. INHABITANTS OF
ST. PAUL,
COVENT
GARDEN.

Willes, Ashurst, and Buller, justices, concurring,

Rule discharged, and the Order of
Sessions, confirming the former Order of
Sessions, affirmed.

ADDENDA and ERRATA.

- P**. 8. Note. l. 8. for "appealed" read "unappealed."
- P.** 12. l. 3. for "therefore at least" read "where that statute attaches."
- P.** 13. l. 1. for "such a doctrine" read "the doctrine, that a magistrate can interfere in such a case with respect to any servant,"
- Ib.** to the note add, "This he contended upon the ground, that the statute ran in the disjunctive. From other parts of the argument as well as the state of the case it appears not to have been the case of a servant in husbandry."
- P.** 15. to note [a] add "*vide* 2 Inst. 735."
- P.** 22. l. 5. *dele* "rather."
- P.** 25. l. 19. for "6th" read "4th."
- P.** 26. l. ult. after "alleging" read "afterwards."
- P.** 27. l. 2. after "prejudice" read "He had run away twice before."
- P.** 29. l. 8. after "Green" add "and Dewes."
- P.** 28. l. 23. after "*Stafford*" add "adjudging their settlement to be at *Sirescote* in the said parish of *Tamworth*, and ordering the overseers of *Tamworth* to receive and provide for them."
- P.** 30. for "*January*" read "*June*."
- P.** 41. l. 8. after "*Norton*" read "where" **Ib.** after "quashed" *dele* "; because" and read " , "
- Ib.** p. 42. l. 26. *dele* from "*Monday* May 12 in Easter, &c. to the end and read "*Thursday* November 27. In *Michaelmas* Term, 1777, *Stanley* on behalf of the parish of *Hinxworth*, moved to quash *the first order of two justices*, dated *June* 17, 1776, for removing *the wife and five children*: to affirm *the second order of two justices*, dated the 30th of *October*, 1776, removing *the whole family*: to affirm *the first order of sessions*, dated *January* 13, 1777, made thereupon, so far as it confirms the said order of justices relative to *the husband*, and to quash the same so far as it vacates the said order relative to the *wife and children*, whom, (contrary to the truth and real merits of the case, if then open to discussion) it had adjudged to be settled at *Hinxworth*: and also to quash *the third*

ADDENDA and ERRATA

third and last order of justices, dated the 20th of January, 1777, for removing the five children from Chesbunt to Hinxworth, and the second and last order of sessions, dated April 7, 1777, confirming the same, so far as it relates to the settlement of all the children therein named, and vacating it, so far as it relates to the present removal (for they were nurse children) of the two youngest of the children."

P. 44. l. 37. for "that that" read "than that."

P. 45. l. 30. for "husband's" read "wife's" I b. l. 31. for "his" read "her husband's."

P. 49. l. 31. for "the new settlement for the second year being in the act of acquiring" read "of the servant's being in the act of acquiring a new settlement for the second year."

P. 50. l. 28. after "contract" add "originally or subsequent dissolutions."

P. 52. l. 6. after "Solicitor General" add "and Whitchurch."

P. 55. l. 30. for "was first hired" read "last served."

P. 67. l. 14. for "a second" read "again."

P. 71. l. 27. after "apply" add "for the appellants."

P. 94. add to note "Rex. v. Hardy E. 17 G. 3. 1777. Cowp. 579. and Rex. v. Inhabitants of Lakenham. H. 25 G. 3. 1785. post."

P. 96. l. 8. for "by" read "to"

P. 104. Note [f] for "post" read "Ante, p. 62."

P. 111. l. 31. for "or equitable claim" read "to an administration."

P. 112. l. 19. *dele* "own."

P. 116. l. 36. *dele* "not." Ib. for "have" read "had."

P. 128. not [e] *dele* from "In this" to "or case:" and after "Settlement 116." add "Modern Cases in Law and Equity, (9 Mod.) 168."

P. 133. To note [a] add "*Vide* Rex v. Inhabitants of Tedford. Tr. 8 & 9 G. 2. 1735, Burr. Settl. Cases, 57."

P. 139. l. 10. for "trustee" read "person." Ib. l. 18. for "to" read "by."

P. 140. E. 34. for "so doing" read "sending her there."

P. 143. l. 3. for "have" read "had" Ib. l. 16. for "claim" read "have previously claimed." Ib. l. 17. for "must" read "may."

Ib. l. 27. after "settlement," add "if the first order had been confirmed upon appeal, must govern the derivative: and the parish to which the second order was directed and which probably would have received no notice, must be concluded by it: on the contrary, if the first order had been discharged upon appeal, the original settlement,"

Easter Term

22 Geo. 3. 1782.

Rex v. Justices of Bedfordshire.

Wednesday,
April 29.

COWPER, H. had obtained a rule to shew cause why a mandamus should not issue, directed to the Justices of the county of Bedford, to appoint an overseer of the poor for the vill of *Chicksands* in that county.

To obtain a mandamus to justices to appoint overseers, it must expressly be sworn, that the place in question either is, or is reputed to be, a vill.

The facts upon the affidavit in support of the rule were, that the vill of *Chicksands* consisted of a capital mansion house, called the *Priory*, and a large farm-house thereto belonging, of the yearly value of 200 *l.* in the occupation of Sir *George Osborn*, baronet; and also of three other large farm-houses, with three other farms, altogether of the farther yearly value of 500 *l.* That about forty years ago there was another farm-house and farm in the said vill, but that the house is now pulled down, and the farm occupied by Sir *George Osborn*: that in the said vill there was also a water-mill, now pulled down: that there is a chapel in the vill for the celebration of divine service: that there immemorially has been, and now is, a constable appointed in and for the said vill; and that there are within it four substantial householders, but no churchwarden or overseer. These facts were sworn to by *Joseph Cooper*, who had about forty years before rented the farm-house, now pulled down, together with the farm now in the occupation of Sir *George Osborn*.

Against the rule it was sworn by *James Bevan*, one of the then tenants of Sir *George Osborn*, that he had lived in *Chicksands* thirty-eight years: that it all belonged to Sir *George*: that he never knew any constable, headborough, tithingman, or other peace officer appointed or sworn in there, or any poor-rates therein; and that it is, and ever had been, extra-parochial.

These facts were also sworn to by *John Blackford*, who became steward to Sir *George Osborn*'s father forty-seven years before, and

Z

then

1782.
 ~~~~~  
 REX v. JUS-  
 TICES OF  
 BEDFORD-  
 SHIRE.

then lived in *Chicksands*; and by *Richard Gresham*, then a tenant in *Chicksands*, and also for the last eleven years steward to Sir *George Osborn*: and they farther swore, that the one formerly as servant to Sir *Danvers*, the father of Sir *George Osborn*, always used to execute, and that the other, as servant to Sir *George Osborn*, now does execute, the precepts issued by the chief constable of the hundred of *Clifton*, in which *Chicksands* is situated.

And it was also sworn by Sir *George Osborn*, that he had been since 1753 owner of *Chicksands*: that by reputation it was formerly a monastery, and came to the crown at the time of the dissolution of monasteries: that it never was reputed a vill: that it was always deemed extra-parochial: that the chapel is a private chapel in his mansion-house, not under the jurisdiction of the bishop, and not having any burial place or chapel wardens: that the person officiating therein, is nominated by the owner of the estate, upon whose pleasure his stipend is dependant, and at whose pleasure the chapel is also shut up: that service is never performed there, when the owner and his family are absent; and that the chapel had been changed from one room to another by Sir *George's* father.

*Wallace* shewed cause against this rule; and insisted, that, before the court would interpose compulsorily, and order the justices to act contrary to their own impressions of duty upon the subject, they would require proof, that the place in question had at some time been reputed, a vill: that, to constitute a vill, it must appear, that there was, or at some time had been, a public officer of some known legal description therein: that on the contrary, nothing appeared in this place more than the domestic æconomy of a private family: that the chief constable's precepts, the only process of a public nature executed within the place, were always executed by one of the servants of the family; but that this person was never sworn in or appointed to any such office: that the constable had been introduced into the affidavit on the other side to meet the case of [a] *Waldron v. &c.*; where it is said by *Hale*, Ch. J. "That one parish may contain several vills, *i. e.* where there are distinct constables in every one of the vills." That this was probably the place that was alluded to, as extra-parochial, by *Holt*, Ch. J. in the case [b] *inter* the inhabitants of the precinct of *Bridewell*, and the parish of *Clerkenwell*; as it is stated to be the

[a] M. 22 Car. 2. 1670. 1 Mod. 78.

[b] H. 11 W. 3. 2 Salk. 486.



Case of Sir *John Osborn*: that it had been adjudged in the case [a] 1782. between the parishes of *Stoke Prior*, and the inhabitants of the manor of *Grafton*, that five houses, without any parochial officers, or the reputation of a vill, would not constitute a vill: and that, from the principle laid down in this case, as well as in that [b] between the parishes of *Denham* and *Delham* in *Sufflk*, to induce the court to interpose, it was absolutely necessary that the place in question should have the reputation of a vill. He also observed, that the rule was drawn up for the appointment of *one* overseer; but that the court could only direct an appointment *generally*, the number of them being [c] in the discretion of the justices.

1782.  
REX v. JUSTICES of  
BEDFORD-  
SHIRE.

*Cowper H.* in support of the rule admitted, that it could not be supported, unless this place appeared to come within the denomination of a township or vill [d] under the stat. 13 & 14 Car. 2.; but contended, though it had not been exactly defined what these were, that Mr. Justice *Blackstone* having [e] stated, "tithings, towns and vills to be of the same signification in law," and it being laid down in [f] *Charley* parish's case, "that a vill and a constable are reciprocal," the circumstance of there being a person here, who always exercised the office of a constable for this place, was decisive: that it was true, there had not been any such officer appointed with all the formalities of the law, because such appointment must have concluded upon a question which had been long in contest; but that the constant execution of precepts within the vill demonstrated the necessity of the appointment of such an officer: that it being out of their precincts, no other constable, unless under a particular appointment [g] was authorised to execute it; that it was evident, that the owner of the vill had so managed the matter of the constable, and taken care that no other than one of his own servants should interfere in the execution of process, for the very purpose of avoiding the necessary consequences of a regular appointment; but that the court would not give him the effect of his dexterity, to the injury of the public: that the fact of this

[a] E. 10 Geo. 2. 1737. 2 Str. 1071. Burr. Settl. Cas. 101.

[b] E. 8 G. 2. 1735. 2 Str. 1004. Burr. Settl. Cas. 35.

[c] St. 43 Eliz. c. 2. s. 1.

[d] c. 12. s. 21.

[e] Comm. vol. 1. 114.

[f] 9 W. 3. Salk 99.

[g] So Salk. in loc. citat. and in the case of the village of *Charley*, Tr. 11 W. 3. 1 Salk 176, which seems to be the same case. 2 Hawk. P. C. 86. Rex v. *Chandler* 11 W. 3. 1699. 1 Ld. Raym. 546. Roe, *Kendale and Others*, M. 7 W. 3. 5 Mod. 81. See vide 2 H. H. 110. and 1 H. H. 582.

1782.  
 REX v. JUSTICES of  
 BEDFORD-  
 SHIRE.

duty being always discharged by the same person, founded so strong a presumption of his being a regular officer, as to justify the affidavit in support of the rule: that the stat. of *Car. 2.* was made [a] to remedy the want of appointment of constables, by lords of hundreds and manors, in whom, of common right, the power was lodged: that no case had gone so far as to say, that a place, circumstanced as this, was not a vill: that it was only settled that two houses would not constitute a vill; and the sole reason assigned was, that there could be no one in such case over whom overseers were to exercise a jurisdiction, and that they must continue for ever in office: that with respect to the chapel, all the tenants within the vill had constantly, and as of common right, resorted to it: that this fact was strong evidence of its public nature, and not consistent with the idea of its being a private family chamber: that this must be so, for the chapel had formerly belonged to the priory [b] of *Chickfands*: that this place was described [c] as a vill in *Domesday*, and as a parish in [d] extracts from the Augmentation office: that, including the mansion or priory, the

[a] Vide 2 Hawk. P. C. 63, 65. 1 Bac. Abr. tit. A.: and that the *Manor* of Chickfand was granted to the Prior and Convent of Chickfand appears by a charter of Edward the Second, Dugd. Monast. 2. 794.

[b] That this was a priory, vide Dugd. Monast. 2. 793, 794. 1. 450, 451, and Tanner's Notitia Monast. 5.

[c] fol. 218.

Bedfordshire.  
 Terra Uxoris Radulfi Tailleb  
 In Clifton Hund.

In Chichesana ten. 111 sochi 111 hid &c.  
 In eadem Villa &c.

[d] In the particular for a grant, of divers lands, &c. to Rychard Snowe, in the 31st year of the reign of king Henry the Eighth, remaining in the Augmentation Office at Westminster.

Com. Bedd.

Pcell possessionu. nup. Monast. de Chykefonde in dco Com. Bedd.  
 Firma unius domus voc. le Dayry Howse cum omibz & singlis al terr dnical in  
 Chykefond *infra prochia de Deane* in com. Bedd. prædict.

Curator Eccle pchial de Deane al Chykefonde per Ann

s d  
 CVI : VIII

Pcur & Sinodal ibm per Ann

s d  
 XIII : III

This

This bynne all the landes & possessionys lyeng & beyng w<sup>in</sup> Chykefonde aforseyde *in the prysh of Deane.*  
 P me Willm Cavendish Audit. ibm:

Bofc. ptin. nup. Monast. de Chikfand *infra prochia de Deane*  
 Feb. 25 Ann. H. 8. 31.

Thoms Crumwell } Virtute Co—fs  
 Rychard Ryche } Regs.

These extracts, properly authenticated and duly stamped, were read by Mr. Cowper; but, not having been made part of the affidavit, which was the ground of the rule, the Court would not notice them.

annual

annual value of the whole of this property was little less than 800 *l. per ann.*; a quantity of interest that ought not to be permitted, by finesse and management, to exempt itself from a fair participation of public burthens; and that at any rate the granting of this rule could not conclude the parties; as, by a return to the mandamus, the question, whether vill or not, must be raised and receive a solemn decision. That, had the application been to command the appointment of *more* than one overseer, it might then have been said to controul the exercise of that discretion which is lodged in the justices: but that, if the court interposed at all, they could not order a less number; and that by such interposition the justices would not be restrained from nominating more, if they saw occasion.

Lord *Mansfield*. Whatever you may do hereafter, when the facts alledged are made a part of the case, you now come upon a false foundation. To support this application, it is necessary, that the place should be a vill; but you have not said that it was ever so reputed, or even that you believe it to be one; and Sir *George Osborn*'s affidavit says, it never was so reputed. You next deceive the court by a false suggestion, that there is a constable, and that a constable has immemorially been appointed. It is not true; and the argument is only, that one ought to be appointed. Next, as to the chapel, it is only a private chamber in the house; sometimes one and sometimes another, as suits the conveniency of the family; used for religious purposes when they are in the country, and when they remove from it, shut up, or used indifferently with the other parts of the house. Is it possible that this can be the chapel of a vill?

*Buller, J.* Were Mr. *Cowper*'s doctrine well founded, the court ought to grant a mandamus to the justices in the first instance, to put them to a return: but this is by no means the case; for the court must have probable ground laid before them, to shew that the place is a vill, or they will not interpose: and it is laid down [a] in *Strange*, that it is a good return to a mandamus, that a place is not, or ever was, reputed to be a vill.

*Willes* and *Ashurst*, Justices, concurring,

Rule discharged with costs.

[a] Dominus Rex v. the Inhabitants of Welbeck in Nottinghamshire, M. 14 G. 2. 2 Str. 1143.

Vide Rex v. Justices of Peterborough, H. 23 G. 3. 1783. Post. and Rex v. Inhabitants of Eyford, H. 25 G. 3. 1785. Post.

Rex

1782.

REX v. Jus-  
TICES OF  
BEDFORD-  
SHIRE.

1782.

Rex v. Stanley.

*Wednesday,*  
*April. 24.*

Order of justices, removed by certiorari in due time, may be quashed for objections upon the face of it, without a previous appeal to the sessions. The justices must adjudge a bastard to have been born in the parish to be charged by their order.

TWO justices of the *West Riding* of the county of *York*, by an order dated the 29th of *May*, 1781, adjudge *Thomas Stanley of Worktop*, in the county of *Nottingham*, to be the reputed father of a bastard child, begotten upon *Ann Storey of Anston*, in the said *West Riding*; "which said child is now become chargeable, &c. and is likely so to continue," and then proceed to order maintenance, &c.

This order was served upon the defendant on the 31st of *June*. The next sessions were at *Midsummer* on the 18th of *July*. Upon an appeal to this order, at the *Michaelmas* sessions, holden by adjournment, on the 10th of *October*, that court *dismissed the appeal*, upon the ground of it's not having been made at the sessions next after the service of the order.

In the ensuing *Michaelmas* term a certiorari issued, directed to the keepers of the peace, and justices for the said *West Riding*, to remove all orders upon this subject made by the said justices. Upon the return of these orders, a rule was obtained to shew cause why the *order of sessions*, made on the 10th of *October* 1781, should not be quashed.

*Chambre* objected, that the defendant could not under this rule go into the *original order*, the order of sessions, which alone was moved to be quashed, having only dismissed the appeal and *not confirmed the original order*.

*Buller, J.* Though there may be a slight impropriety in the form, if in effect the order of sessions confirms the original order, the motion to quash the order of sessions is well enough.

*Chambre* now shewed cause against this rule; and insisted, that, till something to raise a contrary presumption was shewn, the intendment of the court was always in favour of the acts of every inferior jurisdiction: that the order of sessions in the present instance, not being objected to as defective in point of form, and not being special, but simply dismissing the appeal against the original order of two justices, could not be quashed: that there having, in point of law, been no appeal, there ought not to have been any order whatsoever made at the sessions; and that, if any objection was made to the original order, the certiorari ought to have been directed to the two justices to have returned it. And he contended supposing Mr. *Wallace* should, as he had intimated, move amend, by making it a rule to shew cause why the order of  
just

*justices*, which had been appealed against, should not be quashed, or should move an original rule to quash *that order*, that in either way, and however shaped and pointed against such order, the application must now be out of time; as the stat. 13 G. 2. c. 18. [a] requires, that the "certiorari be applied for in six calendar months next after proceedings shall be had:" that it had been determined, in the case of [b] *Rex v. Baker*, that these six months are to be computed from the service of the order, which in the present instance was before the *Midsummer* sessions; and that the defendant, having neglected to appeal in time at the proper place, could not now come *per saltum*, and avail himself of an objection in this court.

*Wallace*, in support of the rule insisted, however this might be, had he now sought relief upon the merits, that he was at liberty to take any objection that arose upon the face of any legal instrument before the court: that, though the certiorari had not issued to the two justices to return their own order, but to the sessions, the two justices having returned their order to the sessions and it having been filed there, the certiorari had been properly directed to the place where that order in fact was: that the original order of the two justices had been returned: that it was here and no matter how: that the objection was open to him, and was fatal; it was, that there was no adjudication, that the child was born in the parish charged with its maintenance; nothing more being stated than that it was *chargeable to the parish and likely so to continue*: that the certiorari had been moved early [c] in *Michaelmas* term, long before the expiration of the six months; and that to whomsoever it was directed, the return contained and had brought before the court, every thing necessary to his purpose.

*Chambre* now insisted, that the notice of the motion for the certiorari was irregular, as it only stated, that application would be made to the court *after the expiration* of six days from the time of the service, without specifying any particular day; so that the justices and the party were deprived of their opportunity of shewing cause against its issuing, which the act intended they should have.

*Wallace*. It is no more uncertain than notice of motion on the first day of term or *so soon after*, as counsel can be heard.

Lord Mansfield. The notice is sufficient.

[a] s. 5.

[b] M. 27 Car. 2. 1675. 3 Keb. 551.

[c] Thursday, November 8.

1782.

REX v.  
STANLEY.

*Wallace*

1782.

~  
 REX v.  
 STANLEY.

*Wallace.* That, as to the appeal being too late, no appeal was in any such case necessary at any time: that it was stated on the other side, that under the circumstances the court of Quarter Sessions had no jurisdiction, and even that it was no appeal: that this was an objection therefore upon the record, and not upon the merits.

The court seemed to think, that if the defendant had meant to take exceptions to the original order, he should have done it by appeal in due time to the sessions; as they could give relief as well upon the form as upon the merits: and that having declined the bringing of his case before the proper jurisdiction, in the first instance, he ought not now to be assisted by the court *per saltum*: but they gave time to look for authorities to justify such an interference.

A few days afterwards, *Cbambre* admitted, that the order might be brought up by certiorari, without any appeal having been previously lodged at the sessions within time; and he stated the general rule as laid down in [a] 1 *Salk.* 147, that no certiorari shall be granted to remove orders of justices *before* the determination on appeal to the sessions, unless the time of appeal be expired; because it otherwise hinders the privilege of appealing: consequently that the court had a general authority to interfere; and that the present case, in which the defendant had declined an appeal within the period prescribed by law, was not within the exception. He also said, that this rule was farther explained in the [b] case of the borough of *Warwick*; which adjudged, that it was only in cases wherein the time of appeal was limited, and not where it was left open at any time, that this general authority of the court was abridged.

He added, that, as the certiorari appeared to have been moved in time, he should not press the court upon the form of the present rule, and without a reasonable prospect of success put the party to the expence of another.

*Per Curiam,*

The original order of adjudication of two justices must be quashed, and the order of sessions, dismissing the order of adjudication, affirmed.

[a] E. 1 Ann.

[b] M. 8 G. 2. 1 Str. 991.

1782.

REX  
versus  
HARTLEY.

On a rule to shew cause why this conviction should not be quashed, *Chambre* took two objections: 1. That it was not fully and sufficiently stated, that there had been an using of the greyhound, *i. e.* how and in what manner, and for what purpose. 2. That it was not expressly and positively averred, that he had kept and used a greyhound at all.

1. He contended, that it was an established rule in convictions, that every material fact should be directly averred, and the evidence particularly stated: that in the present instance the manner of using, or purpose for which used, was so far from being particularly set out, that the conviction had only at most pursued the language of the act, viz. that the greyhound was kept "to kill and destroy the game:" that this was not sufficient, and that it was necessary to set out the evidence at large, he relied upon two authorities: 1. The case of [a] the *King v. Killet*, Clerk; which was a conviction of a clergyman under stat. 19 Geo. 2. [b] for neglecting to read the act against profane cursing and swearing: that in this conviction the information fully charged the offence, specifying that the defendant was parson of the parish, his officiating as such, his neglecting to read, &c. and that the same, as set forth, was duly proved; but that the court held, that it ought to have appeared to them, from the nature of the evidence specially set forth, that the defendant was guilty: and that the conviction was accordingly quashed. That in the other case [c], the *King v. Sparling*, which was a conviction under the same stat. [d] for profanely cursing and swearing, the conviction set forth the evidence to be, that the defendant profanely swore fifty four oaths and one hundred and sixty curses, &c. but the court held, that it could not in that form be supported, "the oaths and curses not being set forth: for that what is a profane oath or curse is matter of law, and ought not to be left to the judgment of the witness." That here the evidence is only, that the defendant kept a greyhound for killing the game: that therefore the witness here in like manner takes upon himself to swear to the law, and to judge what is game: and that he ought to have specified what the defendant did, or what game he destroyed; the particular act done, or the species of

[a] E. 7 G. 3. 1767. 4 Burr. 2063.

[b] c. 21. s. 13.

[c] H. 8 G. 1. Str. 497.

[d] s. 1.

animal meant to be destroyed; as by so doing he would have supplied materials to enable those to form a judgment, whom the law considers competent to judge.

2. That it is not expressly and positively averred, that the defendant had kept and used a greyhound at all; but only that he kept and used a certain dog *called* a greyhound: that it might be called so, and yet be another kind of dog: that it might partake even of the nature of a greyhound; but that the act [a] clearly describes one particular species of dogs: that it might be an *Italian* greyhound, and unfit for the purposes prohibited by the act: and that it had been adjudged, that keeping a hound, though for the destruction of the game, could not be punished under this statute [b].

*Wilson. J.* in support of the conviction insisted, that the reason of the thing by no means justified the authorities that had been cited; and therefore that in a formal objection, where all the authorities were not uniform, the court would not, if not satisfied upon principle, avoid an act of a magistrate, which was not impeached upon the merits; especially as by so doing they would inevitably subject him to an action, a distress having been taken under the authority of this conviction: that where an act describes an offence, there seems to be no method so accurate and so little exceptionable as to follow the words of the legislature: neither in the present case, in which the penalty was the same whatever the sort of game might be, could any objection arise [c] from the inability of the magistrate under a general charge, to proportion the punishment to the particular nature of the offence: that there was but one species of game that a greyhound could kill: and that independent of the use, the keeping only for these purposes, of any dog prohibited by the statute, was sufficient to constitute the offence; for the statute says in the disjunctive, keep *or* use; and that, unless from the particular circumstances attending the dog, or other proofs adduced, the contrary could be shewn by the defendant, the law would infer that such dog was kept for such pur-

1782.

REX  
versus  
HARTLEY.

[a] The words of the act are: if any person shall, &c. keep *or* use any *greyhound*, setting dogs, hayes, lurchers, tunnels, or any other engines to kill and destroy the game, &c. s. 4.

[b] H. 13 G. 2. Hooker v. Wilks, 2 Str. 1126.

[c] Vide Rex v. Chapman, B. 28 G. 2. 1755. Sayer 203.



1782.

REX  
versus  
HARTLEY.

poses: that in the case of [a] the *King v. Filer*, it was holden upon this statute, that, as it ran in the disjunctive, the bare keeping of a lurcher is an offence within it: that the keeping of any of the things enumerated by the legislature, was therefore of itself an offence: that things indeed, which were only constructively included in the act, as a gun under the word "engines," must be expressly shewn upon the face of the proceedings to have been kept for the purpose of destroying the game; because a gun may be used for other purposes, as the protection of a man's house: that to this last doctrine, which was recognized in the case of [b] the *King v. Gardner*, it was added by the court, that "a gun differs from nets and dogs, which can only be kept for an ill purpose:" and that the present case being that of one of the instances enumerated, nothing more was necessary to be set out.

*Chambre* in reply, urged, that the cases cited against him had all gone upon the form of the adjudication; but that his objections went to the state of the evidence; that it was true, that it had been said in the *King v. Gardner*, that the purpose for which dogs were used, need not be set out; but that was not the point of the case: that the question there was, whether it was necessary to set out the purposes for which a gun was used: that the court held, it was, because a gun might be used for other purposes, as the protection of a house: and that the principle therefore of this decision supported his argument; for that dogs are more commonly kept for this very purpose, the protection of houses, than guns are.

Lord *Mansfield*. Convictions must certainly be precise, that the court may see whether the offence committed falls within the jurisdiction of the magistrate; and, whatever the consequences are, they must be quashed if not so. In this act there are two offences described; a keeping and an using; and the legislature mean, that there may be a keeping to destroy, &c. which is not of necessity to be proved by an using for that purpose. If it were so, it would be tautologous; for such evidence would be a proving of the other offence. The keeping therefore of a thing prohibited being an offence under the act, it is necessarily *primâ facie* evidence of a keeping for the purpose prohibited; and it is incumbent up-

---

[a] H. 8 G. 1. Str. 496.

[b] Tr. 11 G. 2. 2 Str. 1098.

on the defendant to shew that it is kept for another purpose; as that in the present case, it is a house dog, a favourite dog, or a particular species of greyhound. The description cannot be more precise, unless some particular instance of using is shewn; which, if keeping of itself constitutes an offence, cannot be necessary.

As to the other objection, that the averment in this conviction is defective, in stating only that this was a dog *called* a greyhound, I think it positive enough. It must mean the dog of that species, generally known in this country.

*Willes, J.* The case of the *King v. Gardner* is in point, and must govern this. There is hardly another use to which this species of dog can be applied.

*Ashburst, J.* There is no doubt but that, under the common acceptation of the words used in the conviction, this is a sufficiently apt description of a greyhound: and it is not necessary in convictions to adhere to the letter.

*Buller, J.* concurring,

Rule discharged and  
conviction affirmed.

Vide the case of *Rex v. Thompson*, Tr. 27 G. 3. 1787. *Durnford and East*.

1782.

REX  
versus  
HARTLEY.

## Rex v. Inhabitants of Bagworth.

Wednesday  
May 1st.

BY an order of two justices of the county of *Leicester*, the form of which was as follows:—

“Whereas, &c. we, the said justices, upon examination of the premises upon oath and other circumstances, do adjudge the same to be true, and also do adjudge the place of the last legal settlement of the said *Sarah Ward* is in the said parish of *Ratby*, &c.”

The said justices remove *Sarah Ward* from the parish of *Bagworth* in the county of *Leicester* to the parish of *Ratby* in the same county. The sessions on appeal adjudged the settlement to be in *Bagworth*, quashed the order, and stated the following case:

That about nine weeks before old *Michaelmas* 1780, the pauper was hired by *William Hunt* of *Ratby*, for one week at two shillings and sixpence per week wages, and continued to live in that

Service under a hiring for a year will connect with similar preceding services under any number of hirings from week to week. An order of removal need not state an examination or summons of the pauper.

1782.

~  
 Rex  
*versus*  
 Inhabitants  
 of BAG-  
 WORTH.

Settlement at  
 Ratby.

that service in the said *William Hunt's* house at *Ratby* by the week till old *Michaelmas*, and received her wages every week. That during that time she considered herself at liberty to have quitted her service at the end of any one week, and to have hired herself to any other person. That at said old *Michaelmas* 1780, she was hired for a year from that time, and that she served till about a fortnight before the following old *Michaelmas*; when, being with child, she was desirous to conceal the knowledge of it from her master, and applied to her master to leave her service; and they parted by consent, and he paid her her wages, up to that time. That she was employed in the same manner during the time she served by the week, as under the hiring after *Michaelmas*.

*Dayrell* shewed cause in support of the order of sessions; and contended that, though the old rule, which was universally acknowledged to be the true as well as the most political construction of the act of parliament, *i. e.* that there must be not only an entire service for a year, but that such service must be under one entire hiring also, to gain a settlement, had by a long series of later authorities been overturned, the court ought not to extend a principle they did not approve, beyond the line of any former decision: that in every case which existed, in which a hiring and service for a broken period of time had been holden to connect with a service under a hiring for an entire year, such broken period had always been a considerable portion of time and in no instance less than a quarter of a year: that the act in its very terms [a] requires *a continuing and abiding* in the service: that, if the court were to hold, that these words were satisfied by a hiring for a week, they must also by a hiring for a day; and it would consequently be in the power of any master in twenty-four hours to settle in his parish any day-labourer, who had worked with him for twelve months: that the ceremony of a hiring for a year was in such case the only requisite: that, however, unlikely it might be to be frequently acted upon, the court would not think fit to lodge such a power [b] in the hands of masters: and that by the provisions of stat. 5 *Eliz.* [c] weekly

[a] 8 & 9 W. 3. c. 30. s. 4.

[b] Vide *Dennison, J.* in the case of *Rex v. the Inhabitants of Winton* otherwise *Wrighton*. M. 22 G. 2. 1748. *Burr. Sett. Cas.* 280, and *Page, J.* in the case of *K. v. Aynhoe*. M. 1 G. 2. *Bott.* 292. and the court in the case inter the *Inhabitants of Dunsfold and Ridgwick*. M. 9 Ann. 2 *Salk.* 535.

[c] c. 4. s. 12.

servants

servants are considered and put upon the same footing as day-labourers.

But in what view soever this might be considered by the court, he insisted, that the order itself could not in point of form be supported: that it did not appear to have been made upon proper and sufficient evidence: that it was made only upon examination of the premises: that an inquiry generally into the subject matter is not enough: that the pauper himself must be examined, and that that has been so holden in the case of [a] the *King v. Wykes* and Others.

*Buller J.* It cannot be necessary in all cases, that the pauper should be examined. In that of an infant of tender years it would be impossible. There is no such general rule: and as to the case cited, it was an information, and must therefore have gone on different grounds. The Justices probably [b] had refused to hear the pauper.

*Dayrell.* Still, as in the present case, the pauper is not stated to be an infant or under any such disability as would prevent her giving material evidence, it should appear that she had been first summoned, she ought to have had notice and to have been heard, before her removal; as she might have produced a certificate, or shewn other sufficient cause why she ought not to have been removed.

*Buller J.* To this objection an anonymous case in (c) *Comberbach* is in point. In that case *Holt, Ch. J.* says, "If it can be, 'tis fit it should be so, but not absolutely necessary."

*Bearcroft* and *Gally* were in support of the rule to quash this order: and *Bearcroft* insisted, that with respect to the last objection, even if there were not a case in point in his favour, nothing less than an authority directly in point against him, could, in this stage of the business, have induced the court to let it pre-

1782.

REX  
versus  
Inhabitants  
of BAG-  
WORTH.

[a] Tr. 11 & 12 G. 2. 1738. Andr. 238.

[b] It was at the instance of a substantial person, the party removed, against Wykes, an inhabitant of the parish from whence the removal was made, and who took an examination without summoning the party and in which no complaint appeared, that the party was "likely to become chargeable," but only that he "had endeavoured to gain a settlement there contrary to law," and then sent the party to two other Justices to be removed. This the other justices did, under the examination taken by Wykes. The information went against them all; but against Wykes, as the case states, principally, not on account of the neglect of the summons, but because it was not said in the complaint. "that the party was likely to become chargeable."

[c] E. 10 W. 3. Comb. 478.

1782.

REX  
versus  
Inhabitants  
of BAG-  
WORTH.

vail: and that, whatever the practice and the readiest rule in general for investigating the fact might be, a discretion was still to be exercised by the magistrate; and that the statute did not contain any peremptory direction to examine the pauper. That, as to the point made upon the facts stated, the words of *Parker Ch. J.* in the case of [a] the *King against the Inhabitants of Brightwell* applied exactly, and must govern the present case: and if there existed any decision in which the court had holden that a weekly service could not be coupled with a service by the year, there were other ingredients in the case; and it must have gone upon the principle, that the two services [b] were in a different character and not *ejusdem generis*: that therefore, in the instance of a day labourer or other workman, not an inmate, as these circumstances made the whole difference in point of law, the ill consequences pointed at could not possibly arise; but that the present was the case of a domestic, a menial servant, and it was expressly found, that the weekly service was performed, while the pauper "continued to live in her master's house," and that during this service "she was employed in the same manner as under the hiring after Michaelmas."

Willes J. (stopping Gally)

The question raised upon the merits is perfectly clear; and indeed seems to have been yielded at the bar. The pauper did not live in this family occasionally, or work under their directions merely as a day-labourer or charwoman, but constantly as a menial servant, and employed throughout in the same services: and a hiring for a year with a year's service in the whole, and that of a similar nature throughout, though it is made up of several hirings, (provided there be no discontinuance) gives a settlement. To the objection in point of form the case cited from *Comberbach* is decisive. And, if it were not, I should have no difficulty. We are to presume in favor of orders. An examination of the premises is an investigation of every fact relevant to the subject: this can-

[a] E. 1 G. 1. 1715. 1 Sef. Caf. 92. 10 Mod. 287. See also Caf. of Settl. 297. S. C.

[b] Vide *Rex v. the Inhabitants of Wrinton* otherwise *Wrinton*, M. 22 G. 2. 1748. Burr. Settl. Caf. 280. and *Rex v. Inhabitants of Grendon Underwood*, Tr. 23 G. 3. 1783. post. from whence the clear inference seems to be, that, though the capacity in which the servant acts, and the nature of the services performed, are not of the same denomination or genus, yet, if throughout the whole period of the two services, the pauper continues to be a menial servant and part of his master's family, such services will in point of law connect, and give a settlement.

not be but by means of the testimony of every necessary witness : and injustice cannot have been done; for, as this case went in course of appeal to the sessions, had there been an actual failure of this or any other necessary evidence, advantage would have been taken of it upon the case stated.

*Buller, J.* Here is a continuance in the service for a year : and it has been long settled, that, where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for a year. The extent and duration of the several preceding services, where such services have been similar, have never been adjudged to vary the law : but there must be one entire hiring for a year. As to the other objection, independent of the authority, where it is doubtful whether an order is good or bad, the court will presume it good : and, as the settlement may be made out by other evidence, and cannot always by that of the pauper, it cannot be indispensably necessary that she should be examined. In the *King v. Honiton*, as reported by Mr. *Bott* p. 202, the order is set out at large, and is open [a] to the same objection ; but none such was taken.

*Ashburst, J.* concurring,

Rule absolute.

Order of sessions quashed, and

Order of two justices affirmed.

Lord *Mansfield*, not having been in court during the whole of the argument, gave no opinion.

---

[a] The form of the order in that case was as follows : " And whereas upon due examination and inquiry made into the premises by us, the said Justices, it appears unto us, and we accordingly adjudge, &c."

Rex v. White and Eling, Overseers, &c.

Saturday,  
May 4.

**P**EMBERTON A. had moved in arrest of judgment upon an indictment against the defendants, tried at *Bedford* before *Eyre, B.*, for not obeying an order of a justice of peace, made un-  
 authority, must be recited or at least referred to in an indictment for disobedience of such authority.

Such previous orders, as are the foundation of the magistrate's

B b

der

1782.  
 Rix  
*versus*  
 WHITE and  
 ELING,  
 Overseers &c.

der stat. 19 G. 3., [a] directing the defendants, overseers of the parish of *St. John* in the town and county of *Bedford*, to reimburse a sum of money advanced by the overseers of the parish of *Meppershall* in the same county, to the family of a substitute in the militia of the said county, for an inhabitant of the parish of *St. John*; and which family at the date of the said order dwelt in the said parish of *Meppershall*.

The indictment at large stated, that on the 18th day of *July* 1781, *John Nesbitt*, Esq; one of the justices, &c. did issue an order under his hand and seal, in the words following. "County of *Bedford*. To the overseers of the parish of *St. John* in the town of *Bedford*. It appearing to me *John Nesbitt*, Esq; one of his majesty's justices of the peace in and for the said county, on oath, that the overseers of the parish of *Meppershall* in the said county have paid to the wife of *John Huffiff*, for herself and three children, the sum of four shillings per week for eighty-three weeks, beginning on the 24th day of *June* in the year of our Lord 1773, and that the said *John Huffiff* served during all that time, as a substitute in the *Bedford* militia for *John Clayton* of your said parish of *St. John*. These are therefore to order and direct you, the said overseers of the parish of *St. John* in the town of *Bedford*, to pay to the overseers of the parish of *Meppershall* in the said county the full sum of sixteen pounds and twelve shillings—Given under my hand and seal, *July* 18th 1781.

That on the said 18th day of *July* at the parish of *St. John* in the town of *Bedford* within the county of *Bedford* aforesaid, *John Bell*, then and now one of the overseers of the poor of the said parish of *Meppershall*, did produce and shew to *Thomas White* and *John Eling*, then and now overseers of the poor of the said parish of *St. John*, the said order of the said *John Nesbitt*, and did then and there demand of the said *Thomas White* and *John Eling* the sum of sixteen pounds and twelve shillings in the said order directed to be paid by the said overseers of the poor of the said parish of *St. John*, to the overseers of the poor of the said parish of *Meppershall*.

That the said *Thomas White* and *John Eling*, then and now being overseers of the poor of the said parish of *St. John*, on the day and year aforesaid, at the parish of *St. John* aforesaid, un-

---

[a] c. 72. s. 2.

lawfully, knowingly, and wilfully did refuse to pay to *William Lincoln* and the said *John Bell* or either of them, then and now overseers of the poor of the said parish of *Meppershall*, the said sum of sixteen pounds twelve shillings, and still do refuse to pay the same, in contempt, &c.

1782.  
 ~~~~~  
 Rex
versus
 WHITE and
 ELING,
 Overseers &c.

To this indictment, upon which the defendants were found guilty, *Pemberton*, A. now took three objections; 1st, that it did not set out any order of maintenance previous to the order of reimbursement, without which first order there could be no legal foundation for the last. 2d, That the order was retrospective, being for the payment of a sum supposed to have accrued under an order of maintenance, made long before; whereas the act directs [a], that the order of reimbursement shall be made *at the same time* with the order of relief or maintenance; and that it was for a gross sum for eighty-three weeks; and, as inhabitants may change in that time, they ought not to be so charged, as this circumstance, or that of houses being uninhabited, would produce an inequality in the assessment. 3d, That it did not appear, upon the face of the indictment, either that the militia-man, for whom the substitute served, was ballotted, or that the substitute was sworn or enrolled.

Murphy and *Graham* shewed cause against the rule to arrest the judgment; and contended, in answer to the first objection, "that the order of maintenance was not set out," that the maxim, that there could be no intendment made to support an indictment, is not to be taken without some limitation; for there must be circumstances of inducement: that the order of maintenance is a judicial act, and that after verdict the court will presume it regularly made: that this was done in the case of [b] *The King v. Wright*; which was error upon a judgment on an indictment for suffering an escape of persons, *qui commissi fuerunt* by justices of the peace under stat. 8 H. 6. for a forcible entry: the error assigned was, that it is not expressed how the commitment was made, whether upon view of the justices or verdict

[a] The words of the act are: "In case any substitute, whose family may become chargeable, shall not serve for the parish where his family shall dwell, it shall be lawful for the justice of peace, who shall make any order for the relief of such family, *at the same time* to direct the overseers of the parish for which he shall serve, to reimburse the money so paid, to the overseer or overseers, who shall have advanced the same in pursuance of the order beforementioned."

[b] M. 23 Car. 2. 1 Ventr. 169. Vide 3 Salk. 93. S. C.

1782.
 ~~~~~  
 REX  
*versus*  
 WHITE and  
 ELING,  
 Overseers &c.

upon an indictment; so that it doth not appear, that they were legally committed, nothing of the proceedings being set forth, and it not being even said, *debito et legitimo modo commissi*. And the court held, that it being but inducement to the offence whereupon this indictment is, that it is well enough alledged, and after the verdict they must intend, "the commitment was legal." That the case of [a] *The King v. Pollard and Taylor* was very similar to the present; and that there in an indictment against an accessory, it was not holden necessary to aver that the principal could not be taken: that the present was not the case of a penal statute; and that here every thing material was set out.

2. As to the second objection, "that the order of reimbursement was not of the same date with the order of maintenance, but long after; and that it directed the payment of a gross sum," they insisted, that the words of the act must receive a reasonable construction: that, if taken strictly, it would in all cases be nonsense; but that in this particular case it was impossible that it could be so taken, as the order of maintenance was made [b] before the act passed: that the words "at the same time" must be construed adverbially and to mean "also" or "likewise": and that the sum directed was very reasonable for the length of time; and in a large parish was too small to become the object of a new assessment.

3. To the last objection, that it does not appear, that the militia-man himself was ballotted, or that his substitute was sworn or enrolled, they urged; that it appeared, that the substitute served for his principal; and that out of this whatever else was called for by the objection arose as necessary inference; for that the substitute could not have served at all without having been sworn and enrolled; or in the character of substitute, had not his principal been previously balloted and drawn.

*Pemberton, A.* in support of the rule to arrest the judgment, insisted, 1st, that in criminal proceedings nothing is aided by a verdict: that they differ altogether from civil actions: that the statutes of jeofails do not extend to them, and did not even to the

---

[a] M. 11 G. 1724. 2 Ld. Raym. 1370.

[b] This act passed on the *thirtieth* of June 1779, and the order of maintenance must have been on or before the *twenty-fourth* of the same month: as the indictment states, that the weekly sum to be reimbursed began to be computed on that day.

cases of mandamus and quò warranto, till the statute of *Ann.* [a]: that the order of maintenance was not matter of inducement; but the very foundation, upon which the whole authority of the magistrate rested.

Lord *Mansfield* (stopping *Pemberton*,)

In indictments the crime, with which the defendant is charged, must appear with a scrupulous certainty: and here it is disobedience to the order of a justice. Now it must appear upon the face of the indictment that this was a legal order; for, if it is not so, disobedience to it is no crime. Then this is an order of reimbursement, which pre-supposes an order of maintenance. Such order necessarily must be; for, if the overseers had made the disbursement, of their own accord and without an order for that purpose, they could not legally be reimbursed. Such voluntary payment would not have entitled them to reclaim the sum advanced, because they are not authorized to judge of circumstances. Had the justice of peace recited the order of maintenance, 'tis admitted the indictment would have been good: and had he even in general terms referred to it, the court might perhaps [b] have presumed such order properly made. There would then have been some colour of authority for the jurisdiction exercised. But, so far from having recited it, he has not made the slightest reference to it. The indictment therefore cannot be supported.

Besides, the order of reimbursement is not at all connected with the order of maintenance, though the act requires, that they should both be made by the same justice *at the same time*: i. e. that whatever shall be paid shall be reimbursed: but this is at the distance of a year and for a gross sum.

*Willes, Ashburst, and Buller*, Justices, concurring,  
Rule absolute, and  
Judgment arrested.

1782.

~  
Rex  
versus  
WHITE and  
ELING,  
Overseers &c.

[a] 9 Ann. c. 20. s. 7.

[b] But it has been adjudged, that in an indictment where the jurisdiction exercised is founded upon a former order, a general reference to such order, without stating it, is not sufficient to support the indictment. H. 20 Geo. 3. *Rex v. Winship and Grunwell*, overseers, &c. ante p. 72. Vide *Rex v. Thomas Mytton*, Esq; Tr. 25 G. 3. 1785. post.

1782.

Lowndes, Esquire, v. Lewis, Clerk.

Saturday,  
May 4th.

A life-estate  
of less than  
150*l.* per  
annum, is  
not a quali-  
fication to  
kill game.

**T**HIS was an action of debt on the stat. 5 *Ann.* [a] for the better preservation of the game, and the defendant pleaded the general issue. At the last assizes for the county of *Oxford*, the cause was tried before *Heath*, J.; and the plaintiff obtained a verdict for two penalties upon two counts, one for keeping, and the other for using, a greyhound, upon the ground that the defendant, who had a living of 100*l.* per annum, had not shewn an exemption under the stat. 22 and 23 *Car.* 2.; but with leave for the defendant to move to set aside the verdict, and enter it for the defendant.

And now upon such motion it appeared from the judge's report, that the points of law which arose out of the facts in proof at the trial, and which were meant to be submitted to the judgment of the court, were

1. Whether a person, having an estate for life of 100*l.* per annum, is qualified to kill game?
2. Whether a vicar, in respect of his church, has an estate of inheritance in him, or an estate for life only?

The first and most general question depended upon the words of the act, [b] which were, "that every person not having lands and tenements, or some other estate of inheritance *in his own or his wife's right*, of the clear yearly value of one hundred pounds per annum, or for term of life, or having lease or leases of ninety-nine years, or for any longer term, of the clear yearly value of one hundred and fifty pounds, is hereby declared to be a person, by the laws of this realm, not allowed to have or keep for himself or any other person, any greyhounds, &c.:" and the principal difficulty upon the argument seemed to be, whether the words "or for term of life," were properly referable to the first or last branches of the sentence, which created the exemption?

*Howorth*, *Bower* and *Clerke* shewed cause against the rule to enter the verdict for the defendant; and *Howorth* insisted, that, the interest of a parson *jure ecclesiæ* being no more than an estate for life, such property would not exempt him from the penalties of the stat. of 2 *Ann.*: that it was necessary that such an ecclesiastical estate

[a] c. 14. s. 4.  
[b] c. 25. s. 3.

1782.

LOWMDES,  
Esquire,  
versus  
LEWIS,  
Clerk.

or [a] rector has nothing in any such right, but holds only [b] *jure ecclesie*: that the inheritance is certainly [c] in abeyance: that he has not the mere writ of right, because he has not the intire fee [d]; but only the special remedy of *juris utrum* [e]: that a bishop indeed [f] had the fee in him; but that a rector had only an estate for life and that only in the right of his church; and, if he is intrusted with some of the remedies given to tenants in fee, it is for the benefit of the church only: that it was also observable upon this very right given to the clergy by the stat. of R. 2., that, though its provisions extended to all laymen, and even included artificers and labourers, "who had lands or tenements to the value of *forty shillings* by year," it enacts, that no priest "nor other clerk, if he be not advanced to the value of *ten pound* by year, shall have or keep from henceforth any greyhound, &c.:" that the insisting upon a qualification of ten pounds *per annum*, at that time and according to the then value of money, amounted in most instances to a prohibition: that it certainly must have been so meant; and that the reason was, that by the canon law [g] all clergymen were prohibited from using these sports.

That, as the statutes of the first and seventh of King *James* had been insisted upon as shewing that the legislature had uniformly made a distinction between estates of inheritance and estates for life, with respect to the annual value necessary to convey the right in question, the statute of [b] 3 *Jac.* which enabled any person, having lands of 100*l.* *per annum* in fee, or for life to seize and keep any gun used, &c. by any person not having, &c. might be cited on the other side to shew, that in some instances at least this distinction was not preserved, but that the owners of these

[a] There had been some mistake in the state of the question in this cause, the defendant being in point of fact *Rector* of Charlton in the county of Wilts.

[b] Litt. f. 644.

[c] Litt. f. 646.

[d] Vide Fitz. N. B. 49.

[e] Booth, 221.

[f] Litt. f. 645.

[g] Vide Blackst. Comm. 2. 413.

[h] The words of the act are; "If any person or persons, not having any manors, lands, tenements, or hereditaments of the yearly value of forty pounds, or not worth in goods or chattels the sum of two hundred pounds, shall use any gun, &c. that then any person, having lands, tenements, or hereditaments, of the clear yearly value of one hundred pounds in *fee-simple, fee-tail or for life*, in his own right, or in the right of his wife, may take from the person or possession of such *malefactor or malefactors*, and to his own use for ever keep, such guns, &c." c. 13. s. 5.

estates,

estates, though different in quantity of interest, were put exactly upon the same footing: and he insisted, that, in judging of this law and drawing consequences from it, the object of the legislature in making it ought to be had in view: that this act had not passed so much with a view of vesting any rights in these two classes or descriptions of men, as for the purpose of providing easier remedies to prevent the invasion by others of rights, which were by these classes of men considered as compleatly vested in them already; or at least that all legal pretence of claim in those, against whom it was levelled, had long been extinguished: that, if by these means it would become more hazardous to offend against the game laws, and consequently these sports, of which our ancestors were so tenacious, would be more effectually protected and exclusively enjoyed, it was within the very same rule of policy not to be too nice in drawing the line of qualification of those, who were empowered to seize the arms of *malefactors*; the strong term used in the act.

As to the words of the statute of *Car. 2.* "or for term of life," and that they relate to leasehold terms for years of 150*l.* *per annum*, and not inheritances of 100*l.*, he urged, that the abstract of *Ld. Ch. Baron Comyns*, who, when he speaks from himself, is a very high authority, confirmed the construction insisted upon by the plaintiff: in his Digest [a] he explains it thus: "By the stat. 22 and 23 *Car. 2. c. 25.* persons, not having an inheritance of their own or their wife's of 100*l.* *per annum*, or 150*l.* *per annum* in an estate for lives or years above 99, &c. shall not keep or use, &c.": and that the act is also stated in the same way in the case of [b] *Bennet v. Talbot*.

*Adair*, Serjeant, in support of the rule to enter the verdict for the defendant, insisted; that the words of the act, without calling in aid from any other quarter, clearly and sufficiently explained themselves: that it was impossible to throw back the words "or for term of life," to the clause respecting leases: that though it might be said that those words were awkwardly placed, from the circumstance of their having the qualifying sum, the 100*l.*, interposed between them and the estate of inheritance, yet it would be both grammar and sense to connect them with the first branch

1782.

LOWNDES,  
Esquire,  
*versus*  
LEWIS,  
Clerk.

[a] Vol. 4. Tit. Justices of Peace, p. 71.

[b] M. 8 W. 3. 1696. 5 Mod. 307. It appears either to have been so stated at the bar, or was perhaps the idea of the Reporter: It is not a point made in the case.

1782.

LOWNDES,  
Esquire,  
*versus*  
LEWIS,  
Clerk.

of the sentence, which describes the inheritance; whereas the next set of words are upon every principle of grammar plainly the introduction of a new branch of a sentence, and in construction detached from the former: that the words, "or having," in this clause answered and stood in opposition to the words, "not having," in the first and introductory clause: that this was therefore a new description in a new sentence, followed by a new value: and consequently that upon this ground a life estate of 100*l. per annum* was a legal qualification to kill game.

But, independent of grammatical niceties, he farther insisted, that in the present circumstances it was not reconcileable to principles to connect a clause respecting estates for life, with that, to which according to legal maxims it bore no relation: that things of the same nature and legal character must have been intended by the legislature to have been classed together: that the most marked distinction in the law is between estates of freehold, though of no higher a description than *pur auter vie*, and estates less than freehold, of whatever duration and extent: that upon this principle the act ought to be interpreted; and to read this clause conformably thereto, would in every sense be the most natural reading; for that the words "or having," not used in the preceding clause, which is the subject of contest, plainly denote, that, when introduced, a new subject is taken up; that that point is the true division of the sentence; and that the latter clause could not mean to comprehend or refer to either of the preceding descriptions.

He also contended, that the argument on the other side, that no spiritual preferment could give a qualification, and which was founded upon the words, "in his own or his wife's right," in the first branch of the sentence, do not apply, unless the words in contest, "or for term of life," are connected with and form a part of the same branch: but that the argument by its very aim referred itself there; and that, if it was properly so referable and not to the latter branch, it was the sole question between the parties; and 100*l. per annum* must be a qualification for a clergyman: that the estate of a parson being "to him and his successors," is but in other terms an estate in fee; that the word "successors," when applied to a parson in his politic capacity, is equivalent to the word "heirs," in his natural; and that this is as large an estate as any corporation has.

He

He observed, that Mr. *Howorth* had not ventured to comment upon, or to offer his construction of, this act of parliament, but had relied entirely upon the language of former acts in *pari materia*; which, as he argued, must have been in the contemplation of the legislature at the time the present act passed: and the Serjeant insisted, that the inference from thence was altogether in favour of the defendant; for, if those acts then lay before the legislature, if they were apprized of the distinctions which those acts made, and have omitted them, or even imperfectly expressed them, it must be presumed that they were purposely omitted; and that, in the construction of a restrictive and penal law, the party prosecuted is intitled to the advantage of either the slip or the intention.

That, with respect to the authorities, much stress ought not to be laid upon the abstract from *Comyns's Digest*: that an abstract materially differs from an opinion: that the first is at most a cursory view of a single passage or section: that the other is the result of a full consideration of the whole subject: that in either view he should oppose to it the authority of a writer, who appeared to have well weighed what he had delivered; and that it is said by Mr. Justice *Blackstone* in [a] his Commentaries, that "the qualifications for killing game are; 1. the having a *freehold* estate of 100*l. per annum*. 2. A leasehold for ninety-nine years of 150*l. per annum*, &c.": and that, as to the case cited, it was in an anonymous author, and no judicial opinion.

That the usual form of convictions upon the stat. of *Anne* shewed, that the act of *Car. 2.* was understood in the sense contended for by the defendant.

Lord *Mansfield*. No. It is quite otherwise. His Lordship then read the form as it is given in [b] *Burn*; and observed, that it appeared from thence, that, as the word "having" in the last member of the sentence is there omitted, the words "or for term of life," which form the preceding member, are necessarily connected with and carried over to the last member of the sentence: and consequently, according to the grammatical construction of this precedent, a tenant for life must have an estate to the amount of 150*l. per annum* to qualify him to kill game.

The clause, as it stands in the act, is not grammar. It is by some slip made nonsensical. The word "having" must be reject-

1782.

LOWNDES,  
Esquire,  
*versus*  
LEWIS,  
Clerk.

[a] Vol. 4. 175.  
[b] Vol. 2. 328.

1782.

LOWNDES,  
Esquire,  
*versus*  
LEWIS,  
Clerk.

ed; or the consequence is, that the having of a term must, as the act is worded, operate as a [a] disqualification: an impossible sense in any way of considering this statute. But leave out this word (and for the above reason it cannot be retained) and all is clear.

*Willes, J.* Construing this act, as it ought to be construed, by itself, and reading it without adverting to what might or might not pass at the time in the minds of the framers of it, it plainly gives, agreeable to the general understanding and practice, a qualification to all such as own a freehold of 100*l. per annum*. With no other title the clergy have always exercised this right, and ought not to be deprived of it. In the clause of the act, which is the subject of debate, there are two distinct branches of sentences, the sense of each of which is governed by the word "having." The break or pause is, where that word is taken up a second time; and there a new direction, a new sense and sentence, begin. This construction does no violence by rejecting any thing; and I cannot consent by another construction to extend the penalties of the act farther.

The forms of convictions, when once settled, whatever was the particular view upon which they were at first drawn, are copied and continued afterwards without thought or consideration. If, previous to the introduction of this form in any book of precedents, the particular case now before the court had ever been made the subject of discussion, the form must have been allowed to have weight: but no such action or prosecution was ever heard of before: on the contrary, the usage has been for persons in possession of an estate for life of 100*l. per annum*, constantly to exercise this privilege. It was this usage therefore, which spoke the sense of mankind upon the subject, and ought to prevail. Whatever may be the good sense of the thing, or the probable intention of the legislature, I think, that upon legal principles, if a penal act is defectively penned, it cannot be carried into execution. Without looking into the authorities cited, this is at present strongly the impression of my mind.

*Ashburst, J.* The act, as it stands, is nonsense. This subjects us to the necessity of adding or rejecting something. "Hav-

---

[a] For instance, "Every person not having some estate of inheritance, or for life, or having a lease for any term of years, is declared to be a person by the laws of this realm not allowed to keep greyhounds, &c."



ing," therefore must, in the last member of the clause, be rejected, or "not" must be added to it, to make the whole intelligible either way.

*Buller, J.* This case seems to me to admit of no doubt, when the question is considered with reference to former acts in *pari materia*; and if we must either reject, or add, or transpose words in this act, to obtain a clear and consistent meaning, under such circumstances we can do no other than resort to former statutes: and each of those cited in the reign of king *James*, not only require in the case of estates for life a higher qualification than in the case of inheritances, but even to a double and treble amount. But upon the act itself the construction must be, that estates for life are not equivalent to estates of inheritance, or the whole of the first clause is nugatory, and altogether rejected in effect; as the second, which is having an estate of freehold, would have included it. The passage in *Comyns*, the case in *5 Mod.*, and the printed form of convictions, all strongly shew the general understanding upon the subject; and, added to the sense of the legislature in the acts *pari materia*, afford to my mind an unanswerable argument.

*Lord Mansfield.* We will think of it; and should we change our opinions, we will let you know. In the mean time let the Rule be discharged.

It was never mentioned again.

---

1782.

LOWNDES,  
Esquire,  
*versus*  
LEWIS,  
Clerk.

Trinity

196

1787.

# Trinity Term

22 Geo. 3. 1782.

Friday  
June 7th.

Rann, Clerk, v. Pickin et al.

Payments in lieu of tithes, settled under a compromise between a parson and parish, and confirmed by act of parliament, are rateable to the poor.

THE quarter-sessions for the county of the city of *Coventry* upon appeal confirmed a rate, whereby the plaintiff, as vicar of a parish in that city, was assessed to the poor for his payments, settled under an act of parliament by compromise with his parishioners, in lieu of tithes, &c. : and refused to state a special case. The plaintiff, refusing to pay the sum so assessed, was distrained upon : and this was an action of trespass brought by the plaintiff against the defendants, the justices and officers, for authorizing and taking this distress. The defendants pleaded the general issue, the cause was tried at the last assizes for the county of the city, and the jury found a special verdict, as follows :

That the said *Joseph Rann*, clerk, on, &c. hitherto hath been and still is vicar of the vicarage of the *Holy Trinity*, in the parish of the *Holy Trinity*, in the said city of *Coventry*, in the county of the said city.

And the jurors aforesaid, upon their oath aforesaid, further say, that the said *Thomas Pickin* on, &c. was Mayor of the said city of *Coventry*, and a justice of the peace of our Sovereign Lord the King, in and for the said city of *Coventry* and the county of the said city, and one of the quorum ; and that *Samuel Vale* on, &c. was also a justice of the peace, &c. And that on, &c. the said *Samuel Johnson* was high constable within the said city of *Coventry*, and the said *John Whitwell*, and *Richard Mullis*, and each of them was an overseer of the poor of the said parish of the *Holy Trinity*, in the said city of *Coventry*.

That in and by a private act of parliament made in the year of our Lord 1558, and in the 4th and 5th years of the reign of the Lord and Lady *Philip* and *Mary*, late King and Queen of *Great Britain*, intituled "An acte for the payment of tith in the citie of *Coventrye*," reciting, that forasmuch as in the city of *Coventry* there had been, before the time of the schism, and the declining from the catholic faith and true religion of *Christ*, two notable benefices and vicarages, the one called the vicarage of *St. Michael*, and the other the vicarage of the *Trinity*, the right and title of the patronages whereof was now most lawfully descended and vested in the Queen's Majesty, the tithes profits and casualties of the which benefices, before the said schism, were sufficient and able to find two grave and learned incumbents and vicars, although the said tithes profits and casualties stood and depended only upon the devotion of the citizens and inhabitants of the same city: and now, since the said disordered schismatical time in the religion of *Christ*, the good will and devotion of the people was so much decayed, that the said benefices were not able conveniently to find any incumbent of any honest estimation and learning; insomuch that the greatest parish in the said city, called *Saint Michael's* in *Coventry*, had and did remain four years and a half without any incumbent and vicar, by reason the profits and emoluments of the same were so small, that no learned or apt priest would be content to accept or receive the same; and so was very like still to remain, if remedy were not ordained. And because there was no ordinary way, by the law or statutes of this realm at any time theretofore made or provided, to enforce the minds and devotions of the said inhabitants, to pay any other kind of tithes and duties to any of the said vicars, than they themselves should think meet, by reason thereof, it was very like that the patronages before remembered, should remain and be of no value or estimation, and that also the catholic and devout people inhabiting in the said city, should want and not have the sacraments of the church to them administered, according as it was meet for christian people to have; for reformation thereof it was enacted by the authority of that present parliament, that the citizens and inhabitants of the said city of *Coventry*, and suburbs of the same for the time being, should, yearly without fraud or covin for ever, pay their tithes to every of the vicars of the said two parishes before rehearsed, and their successors for the time being, after the rate order and portion hereafter following; (that is, to wit) of every ten shillings rent by year, of all and every house

1782.

RAWN  
versus  
PICKIN.

1782.

~  
RANN  
versus  
PICKIN,

house and houses, shops, warehouses, cellars, and stables, and every of them, within the said city and liberties of the same, twelve pence. And every twenty shillings rent by year, of all and every such house or houses, shops, warehouses, cellars, and stables, and every of them, within the said city and liberties, two shillings; and so above the rent of twenty shillings by year, ascending from ten shillings to ten shillings according to the rate and portion aforesaid.

*Item*, That where any lease was or should be made of any dwelling house or houses, shops, warehouses, cellars, and stables or any of them by fraud or covin, reserving less rent than had been accustomed to be or was then paid, or that any such lease was or should be made without any rent reserved upon the same, by reason of any fine or income paid beforehand, or by any other fraud or covin, that then in every such case, the tenant or farmer, tenants or farmers thereof, should pay for his or their tithes of the same after the rate aforesaid, according to the quantity of such rent or rents as the same house or houses, shops, warehouses, cellars, stables, or any of them were last let for, without fraud or covin, before the making of such lease. *Item*, that every owner or owners inheritor or inheritors, of any dwelling house or houses, shops, warehouses, cellars, or stables, or any of them within the said city and liberties, inhabiting or occupying the same himself or themselves, should pay after such rate of tithe as was aforesaid, after the quantity of such yearly rent as the said houses should be rated at by such persons as the Lord Chancellor should appoint by commission for the same. *Item*, If any person and persons had taken or hereafter should take any mease or mansion place by lease, and the taker or takers thereof had, or their executors or assigns did or should inhabit in part thereof, and had within eight years last past before that order, or thereafter would or should, let out the residue of the same, that then in such case, the principal farmer or farmers, or first taker or takers thereof, his or their executors or assigns, should pay his or their tithes after the rate aforesaid, according to his or their quantity therein, and that his or their executors or assigns should pay his or their tithes after the rate aforesaid, according to the quantity of his or their rent by year; and that if any person or persons had or should take divers mansion houses, shops, warehouses, cellars or stables, in one lease, and did let or should let out one or more of the said houses, and did keep or should keep one or more in his own hands,  
and

and did inhabit the same, that then the said taker or takers or his or their executors or assigns should pay his or their tithes after the rate abovesaid, according to the quantity of the yearly rent of such mansion house or houses reserved in his or their hands, and that his assignee or assignees of the residue of the said mansion house or houses should pay his or their tithes according to the quantity of their yearly rent. *Item*, if such farmer or farmers, or his or their assigns, of any mansion house or houses, warehouses, shops, cellars or stables, had at any time within eight years last past, or should hereafter, let over all the said mansion house or houses contained in his or their lease, to one person, or to divers persons, that then the inhabitants, lessees or occupiers of them and every of them, should pay their tithes after the rate of such rents, as the said inhabitants, lessees or occupiers, and their assigns or assignees, had been or should be charged withal, without fraud or covin. *Item*, If any dwelling house within eight years last past, or thereafter, should be converted into a warehouse, storehouse, kilnhouse or malthouse, or such like; or if a warehouse, storehouse, kilnhouse or malthouse, or such like, within the said eight years, was, or thereafter should be, converted into a dwelling house, that then the occupier or occupiers thereof should pay tithes for the same after the rate above declared of the rents of mansion houses. *Item*, That where any person should demise any dyehouse, brewhouse, kilnhouse or malthouse, with implements convenient and necessary for dying, brewing or making or keeping of malt, reserving a rent upon the same, as well in respect of such implements, as in respect of such dyehouse, brewhouse, kilnhouse or malthouse, that then the tenants should pay their tithes, after such sort as was abovesaid, the third penny abated. *Item*, That when any mansion-house with a shop, stable, warehouse, timber-yard, trinter-yard or garden, or orchard, belonging to the same, or as parcel to the same, was or should be occupied together, that if the same be hereafter severed or divided, or at any time within eight years last past, had been severed or divided, that then the farmer or farmers, occupiers or occupier thereof, should pay such tithes as was abovesaid for such shop, stable, warehouse, timber-yard, trinter-yard or garden aforesaid, so severed or divided after the rate of their several rents thereupon reserved. *Item*, That the said citizens and inhabitants should pay their tithes quarterly (that is to say) at the feast of *Easter*, the nativity of Saint *John* the Baptist, the feast of Saint *Michael* the Archangel, and the

1782.

~  
RANN  
versus  
PICKIN.

1782.



RANN  
versus  
PICKIN.



nativity of our Lord God, by even portions. *Item*, That every householder, paying ten shillings rent or above, should for himself or herself be discharged of their four offering days; but his wife, children, servant, or other of their family, taking their rights of the church at *Easter*, shall pay two-pence for their four offering days yearly. Provided always, and it was enacted by the authority aforesaid, that if any house or houses, which had been or hereafter should be let for ten shillings rent by year, or more, been or had at any time within eight years last past, or hereafter should be, divided and leased into small parcels or members, yielding less yearly rent than ten shillings by year, that then the owner or owners, if he or they dwell in any part of such house, or else the principal lessee or lessees, if the owner or owners do not dwell in some part of the same, should from thenceforth pay for his or their tithes after such rate of rent as the same house had been accustomed to be let for, before such division or dividing into parts and members; and the under-farmer and farmers, lessee and lessees, to be discharged of all tithes for such small parcels, parts, or members, rented at less yearly rent than ten shillings by year, without fraud or covin, paying two-pence a year, yearly for their four offering days. Provided always, and it was enacted by the authority aforesaid, that for such gardens as pertain not to any mansion house, and which any person or persons did hold or should hold in his or their hands for pleasure, or to his own use, that there the person so holding the same, should not by virtue of this act pay any tithe for the same: but if any person or persons, which did hold or should hold any such garden containing half an acre or more, did or should make any yearly profit thereof by way of sale, that then he or they should pay tithes for the same, after such rate of his rent as was therein first above specified. Provided also, that if any such gardens, then being of the quantity of half an acre or more, be thereafter by fraud or covin divided into any less quantity or quantities, then to pay tithes according to the rate aforesaid. And it was further enacted by the authority aforesaid, that if any variance, controversy, or strife, did or should thereafter rise in the said city for non-payment of any tithes, or if any variance or doubt arise upon the true knowledge or division of any rent or tithes, within the liberties of the said city, or of any extent or assessment thereof, so that by any colour or mean, any house or houses, or other things before mentioned within the said city, should escape without rating or assessment, or otherwise be

be discharged, or if any doubt arise upon any other thing contained within this bill or act, that then, upon complaint made by the party grieved to the mayor of the city of *Coventry* for the time being, the said mayor, by the advice of the council of the said city, should call the said parties before him, and make a final end in the same, with costs to be awarded at the discretion of the said mayor and his assistants, according to the intent and purpose of that present act; and, if the said mayor made not an end thereof within one month next after complaint to him made, or if any of the said parties found themselves grieved, that then the Lord Chancellor of *England* for the time being, upon complaint to him made, calling unto him the two Chief Justices for the time being, should make final order in the same cause or causes, as to him and them should seem meet, and should award such costs as to him and them should be thought convenient. Provided always, that if any person or persons take any tenement for a less rent than it had been accustomed to be let for, by reason of any great ruin, decay, burning, or such like occasions or misfortunes, that then such person or persons, his executors and assigns, should pay tithes only after the rate of the rent reserved in his or their lease, and none otherwise, as long as the same lease should endure.

That in and by a certain act of parliament, passed in the 19th year of the reign of our Sovereign lord the now King, intituled "An act for the better providing of a maintenance for the vicar of the parish of the *Holy Trinity* in the city of *Coventry*," reciting, That whereas in the city of *Coventry*, there were two parishes and parish churches, one whereof was the parish and vicarage of *Saint Michael*, and the other the parish and vicarage of the *Trinity*; and whereas the king's majesty in right of the crown of these realms was patron of the said vicarage of the *Trinity*, and the tithes and other vicarial profits and benefits did principally arise from rates or assessments made by virtue of an act passed in the fourth and fifth year of the reign of King *Philip* and Queen *Mary*, intituled, An act for the payment of tithes in the city of *Coventry*: and whereas in process of time, the rates, and assessments made under or by virtue of the said act, had been much diminished from their true value, and differences and suits had arisen and taken place between the vicar and the inhabitants, relative to the said rates and assessments: wherefore, in order to put an end to such controversies, and that an income might be provided in future, sufficient for the maintenance of the vicar of the said parish of the *Trinity*, to be in lieu of all tithes and

1782.

~

RANKIN  
PICKIN.

1782.

RANN  
versus  
PICKIN.

other ecclesiastical dues within those parts of the said parish, which lay within the said city of *Coventry*, and suburbs thereof, except such endowments, bequests and stipends, as had been theretofore, or should be thereafter bestowed upon the vicar of the said parish, and also except surplice fees, it was enacted; that the said act, passed in the fourth and fifth year of the reign of King *Philip* and Queen *Mary*, intituled An act for the payment of tithes in the city of *Coventry*, should so far as the same related to the parish and vicarage of the *Trinity* in the city of *Coventry* and the suburbs thereof be, and the same was thereby declared to be, repealed. And by the said last mentioned act of parliament it was further enacted, that, within thirty days after the passing of that act, and in *Easter* week in every year afterwards, one rate or assessment should be made, laid and assessed by assessors, to be named and appointed as therein after was mentioned, to be in lieu of tithes, and all rates, assessments, or other ecclesiastical dues and payments, claimed by the vicar of the said parish or vicarage, under or by virtue of the said act passed in the fourth and fifth year of the reign of King *Philip* and Queen *Mary* (*Easter* offerings and surplice fees excepted) upon all and every person and persons, who did or should inhabit, hold or occupy any house, garden ground, or orchard for sale, shop, warehouse, dyehouse, malthouse, brewhouse, kilnhouse, or workhouse, yard, barn, stable, shed, cellar, vault, or other tenement, by whatsoever name or description the same might be known, of the yearly value of twenty shillings or upwards, within those parts of the said parish of the *Trinity*, which lay within the said city of *Coventry* and suburbs thereof: which rate or assessment should be collected quarterly, and made and laid to raise one shilling in the pound *per annum*, and no more, upon all and every such premises respectively, according to the yearly value thereof. Provided, that no such rate or assessment should be laid upon any dwelling house only, the annual rent or value whereof should be under six pounds.

That the said tithes, so settled by the said act of parliament of the fourth and fifth of King *Philip* and Queen *Mary*, to be paid to the vicar of the parish of the *Trinity* in the said city of *Coventry* as beforementioned, were never rated to the poors rate for the said parish.

That by a rate or assessment for the necessary relief of the poor of the said parish of the *Holy Trinity*, on the third day of *November*, in the year of our Lord one thousand seven hundred and eighty, the said *Joseph Rann*, clerk, as vicar of the said parish, was rated  
for



for his tithes in the said parish, due and payable by virtue of the said act, at the sum of 7*l.* 10*s.*; and that such rate or assessment was afterwards at the next general quarter sessions of the peace, held in and for the said city of *Coventry*, on the eight day of *January* in the year of our Lord one thousand seven hundred and eighty-one, upon the appeal of him the said *Joseph Rann* therefrom, duly confirmed.

That the said *Thomas Pickin* and *Samuel Vale*, so being such justices of the peace, and of the quorum as aforesaid, on, &c. duly summoned the said *Joseph Rann* to appear before them, &c.

That the said *Joseph Rann* did not appear according to the exigence of the said summons; and that thereupon the said *Thomas Pickin* and *Samuel Vale*, so being such justices of the peace, and of the quorum as aforesaid, on, &c. duly issued their warrant, &c. directed to the churchwardens and overseers of the said parish to make distress of the goods and chattels of the said *Joseph Rann*, &c.

That *John Whitwell* and *Richard Mullis*, as overseers as aforesaid, and the said *Samuel Johnson*, as constable and their assistant, by virtue of, and in obedience to, and executing that warrant, on, &c. seized and took the goods and chattels of the said *Joseph Rann*, &c. But, whether upon the whole matter aforesaid, the said *Thomas Pickin*, &c. are guilty of the trespass, &c. or not, the jurors, &c. pray the advice and consideration of the court here, and if upon the whole of the matter above, &c. it shall seem to the court here, that the said *Thomas Pickin*, &c. are guilty, &c. then the said jurors upon their said oath say, that the said *Thomas Pickin*, &c. are guilty of the trespass, &c. and they assess the damage of the said *Joseph Rann*, &c. over and above his costs and charges, by him laid out about his suit in this behalf, to one shilling, and for those costs and charges to forty shillings; but if upon the said whole matter above, &c. it shall seem to the court here, that the said *Thomas Pickin*, &c. are not guilty of the trespass, &c. then the said jurors upon their said oath say, that the said *Thomas Pickin*, &c. are not guilty of the trespass within complained of: Therefore, &c.

*Balguy* for the plaintiff insisted, that, a case having come a few years since from another parish in the same city, which appeared to him to be exactly the same as the present, it was incumbent on the other side to distinguish them: that the principle of that determination,

1782.

RANN  
versus  
PICKIN.

1782.

RANN  
versus  
PICKIN.

determination, [a] the *King v. Toms*, was ; that the fund which was originally established for the maintenance of the incumbents of these livings, not having been at first subjected to parochial taxation, that which has now been substituted, ought not, without an express agreement, to be received in any other way, or subject to any other burthens.

*Dayrell* for the defendant insisted, that, whatever else might have been said by the court, Lord *Mansfield* had then said, that the words in the clause of the act respecting the other parish, which gave an option to the parish officers to raise 280*l.* annually, and pay it, clear of all *parochial*, &c. taxes and charges, to the vicar in full satisfaction of all his claims, was decisive ; as it was clear from thence, that it must have been the intent both of the parties and the legislature, that he should have at least that sum, free from every possible deduction : that this was the ground of the determination in that case ; but that the present did not afford any such argument, as this act did not contain any such provision.

Taking the case therefore independent of any contract between the parties sanctioned by the legislature, and as it must stand under the general law, he insisted, that there could be no doubt but that tithes were a proper subject of the poor's rate ; and that they were expressly declared to be so by stat. [b] 43 *Eliz.* : that, as to the supposed principle of the decision of the *King v. Toms*, it must have been a mistake ; as the new statute enacts, that the assessments thereby directed shall be *in lieu and full discharge of all Easter offerings, tithes and other ecclesiastical demands whatsoever* : and consequently that tithes must formerly have been part of the maintenance of vicars in the parishes of *Coventry* : that, should it be contended that this was now not so much a payment in lieu of tithes as in the nature of rent, he insisted that there was no idea of rent throughout the act : that tithes, whether by prescription, custom or act of parliament, are equally rateable to the poor : that, if they are tithes, it is not the manner in which they are made payable, that can make any difference : and that, in the case of [c] *Lowndes v. Horne* and Others, it was settled, that the nature and qualities of this property are in no degree affected by the mode in which it is received, and that a sum of money, paid by the owners of land

[a] E. 20 G. 3. 1780. Dougl. 386.

[b] c. 2. s. 1.

[c] H. 19 G. 3. 1779. 2 Blackst. Rep. 1252.

under an inclosing act in lieu of tithes, is liable to the poors rate, and is not a rent.

1782.

RANN  
versus  
PICKIN.

That whether tithes are payable in kind, or, as these are, by way of modus, it is the same thing: that it has been decided in the case of [a] the *King v. the Inhabitants of Lambeth*; that, in the case of a modus or composition, the parson is chargeable as occupier, and that the receipt of a sum of money in lieu of tithe, is in law a receipt of the tithe: that it has been adjudged in [b] Dr. *Graunt's* case, that by *custom* tithes are payable for houses: that of course there could here, under the *act of parliament*, be no difficulty upon that subject: and that in the case of [c] the *King v. Skingle* tithes are adjudged to be a tenement, and as such rateable.

*Balguy* in reply contended, that the distinction between this case and that of *Toms* was only, that in the present there is no sum expressly stipulated between the parties, and from which a constructive exemption, from what might in general be a strict legal claim, could arise on behalf of the vicar; but that here he was clearly exempt by the plain construction and nature of this contract, which annihilated every possible claim, that either might have had upon the other, such only excepted as appeared in express terms upon the face of the treaty: that the court had certainly said in *Toms's* case, that this was not so much a payment in lieu of tithe as in the nature of rent: and that to call it tithe was, upon the letter of the act, to assume the whole of the argument.

*Buller, J.* What say you to the preamble of the act? [d]

The court took time to consider; and the next day *Balguy* (and *Rous* who had attended the Committee of the House of Commons upon this bill) stated to the court; that in the progress of the act, the parties came to an agreement, that the plaintiff should have one shilling in the pound; but, as it did not appear there was any agreement that the produce of this assessment should be restricted to any certain sum, as in the other case, and as there was nothing suggested on either side as to exemption from the poor rate, the court paid little attention to this fact.

And now Lord *Mansfield* delivered the judgment of the court.

This act does not enable the parish to pay the vicar a gross sum, clear of all deductions, whenever the tithes, settled by the act, exceed a given amount; as was the case in the *King v. Toms*. There

Saturday  
June 8th.

[a] Tr. 8 G. 1. 1 Str. 525.  
[b] Mich. 11 Jac. 1. 11 Co. 16.  
[c] Tr. 4 G. 1. 1 Str. 100.  
[d] 4 & 5 Ph. & M.

1782.

RANN

versus

PICKIN.

is therefore a distinction between the two acts : here there is no exemption from parochial burthens, how small soever the sum.

Postea to defendant.

Rex v. Inhabitants of Hensingham.

Saturday,  
June 15th.

A service entered upon in a second year, while in a capacity to acquire a settlement, though without any new contract, and referable only to a former contract entered into when not in a capacity to acquire a settlement, will, if completed, give a settlement, even though such capacity was unknown to both parties at the time the second service or new contract was entered into.

In the first instance it is enough to shew a woman's settlement before marriage : and, if it were not, to know only that her husband was born in Yorkshire, is information of a

TWO Justices by an order remove *Bridget Gibson* and her child from the township of *Whitehaven* in the parish of *Saint Bees* in the county of *Cumberland* to the township of *Hensingham* in the same parish and county. The sessions on appeal confirm the order, and state the following case :

That the pauper, *Bridget Gibson*, widow, on the 6th *January* 1772, married *Andrew Camble* at *Whitehaven*, who shortly afterwards went on a voyage to sea ; and at *Martinmas* following she was brought-to-bed of a daughter by her said husband.

On the 24th of *February* then next, the pauper *Bridget*, her said husband and child being living, was hired by Mrs. *Benn*, wife of *Anthony Benn*, Esquire, of *Hensingham*, to nurse her child for two shillings and six-pence *per week* wages, so long as her child should remain at the breast : that she nursed Mrs. *Benn's* child and continued in her service at *Hensingham* on said contract and wages till *Whitsuntide* 1774, during which time her child by the said *Andrew Camble* died.

That at *Whitsuntide* 1774, the said *Andrew Camble* being then also living and being at *Liverpool*, Mrs. *Benn* went to the pauper, and said, " *Bridget*, I'll give you four guineas a-year, which is more wages than I ever before gave a nursery-maid : " and the pauper agreed thereto, and continued in consequence of this contract with Mrs. *Benn* till *Whitsuntide* 1775 ; but about nine weeks before the expiration of that year, by reason of sickness in some of Mrs. *Benn's* family at *Hensingham*, Mrs. *Benn's* family and also the pauper removed to *Whitehaven*, and stayed there till within ten days of the expiration of the term ; and then the family and the pauper returned to *Hensingham*, and the pauper there continued till *Whitsuntide* 1775 : and the pauper without any other contract or conversation whatsoever continued another year at Mrs. *Benn's* ; (to wit) till *Whitsuntide* 1776 : but the pauper says, she considered herself at liberty at any time, if her husband should return.

In *August* 1775 the pauper received a letter from an inn-keeper at *Liverpool* informing her of her husband's death on the mid-

nature too loose and general, to make an inquiry after him there necessary.

the passage from *Guinea*, which letter is burnt; and on receipt of said letter, her master, at her request, wrote to his friend at *Liverpool* a letter and direction in these words:

Dear Sir,

At the request of *Bridget Campbell*, a servant in my house, I take the liberty of writing to you concerning some wages due to her late husband, *Andrew Campbell*, a seaman, who belonged to the ship, *Violet*, in the *African* trade; which ship arrived at *Liverpool* on the first instant, and brought an account, that *Campbell* died on the tenth of *April* last: his wages were thirty shillings a month, but his wife does not know how many months are due, or whether he had taken up any part of them or not.

If you can make it convenient to inquire into this matter I shall be much obliged to you for your assistance, and will take care to have the necessary requisites performed, for enabling you to receive the money.

I am, &c.

ANTONIO BENN.

*Henfingham*,  
7th September 1775.

To Mr. *Allan Pearson*, Merchant,  
*Liverpool*.

And she received her husband's wages in pursuance of the said letter; but his death, or the time it happened, does not otherwise appear.

On the 2d of *December* 1777 the pauper was married to her late husband, *William Gibson*, who in his life-time told the pauper, he was born in *Yorkshire*; but, where his settlement was, he knew not: that the pauper had by the said *William Gibson*, her son *William Gibson*, the other pauper, lawfully born at *Whitehaven*.

It appearing to this court, that the place of her last husband's settlement is not known, and that the pauper hath gained a settlement in *Henfingham* by a years service with Mr. *Benn*, subsequent to the death of *Campbell*, her first husband, the sessions doth therefore confirm the order, subject to the opinion of the honourable court of King's Bench.

*Wallace* shewed cause in support of these orders; and insisted, that a new service having commenced at *Whitfuntide* 1775, a period at which the pauper was in a capacity to acquire a settlement by

E c

hiring

1782.

~

Rxx

versus

Inhabitants of

HENSING-

HAM.

Settlement in  
*Henfingham*.

1782.  
 ~~~~~  
 REX
versus
 Inhabitants of
 HENSING-
 HAM.

hiring and service, her first husband and child being then dead, she had, by compleating that service at *Hensingham*, acquired a settlement there: that, upon proof of this settlement gained by her in her own right, it became incumbent upon that parish to shew some derivative or subsequent settlement: that, till such proof was made, the settlement that appeared must be taken to be her legal settlement; and consequently, that she had properly been adjudged an inhabitant of *Hensingham*.

Wilson, J., in support of the rule to quash these orders, stated this to be a new case: that the question was, whether the pauper's continuance throughout a compleat new year without any new agreement, at a time when she was capable, though she did not then know it, of making such contract as would in point of law give a settlement, in a service, the original contract respecting which had been made while she was under an incapacity of acquiring a settlement by such contract, could legally be so connected with such former contract, as by a reference to it to be considered a contract at all? And he contended, that, as far as it was a contract, which could be by relation only, it referred itself to an original, from whence it was impossible that a settlement could be derived: that, if it must necessarily be taken as a branch of the contract of 1775, it could not have any other fruit than such as would spring from thence: and that subsequent events, not in the contemplation of either of the parties to this constructive contract at the time, and which if then known, might have prevented the mistress from suffering a continuance of the service, ought not to establish rights and produce consequences, as the fruit of such contract; when no such rights or consequences could possibly exist in the minds of either of the parties at the time the contract was entered into.

But the court intimating an opinion that this might very well be considered as a new and independent contract; and that, in favour of settlements, it would be enough, if at the time of making the contract the party was, in point of fact, whatever might be in contemplation, capable [a] of acquiring a settlement,

Wilson, without insisting much upon the point, resorted to his second ground of objection: which was, that, though the pauper, while unmarried, might have gained a settlement at *Hensingham*,

[a] To this point see the case of *Rex v. Inhabitants of St. Giles's Reading*, Tr. 18 G. 3. 1778, Ante, p. 54.

before

before her settlement could be adjudged to be there, it ought to have been proved, that due diligence had been used by the parish of *Whitehaven* to discover the settlement of her husband: that at least, after what the husband had related of his birth in *Yorkshire*, some enquiry ought [a] to have been made there; and that otherwise there could not correctly be an adjudication, that this was the place of her last legal settlement.

Lord *Mansfield*. Nobody has found a later. "Born in *Yorkshire*" affords about as much of certainty as "born in *England*". It is not a description sufficiently precise to furnish a clew for investigation. If the husband's settlement does not appear, it is the same thing as if he had none: and then this is the woman's settlement. It is the party that alleges she has another settlement, that must shew where it is. The sessions have done right. A case was made to charge the parish of *Hensingham*, and they have not discharged themselves: which if they could, upon proof of the first settlement, they ought to have done.

Willes, Ashburst, and Buller, Justices, concurring,
Rule discharged and
Both orders affirmed.

1782.

REX
versus
Inhabitants of
HENSING-
HAM.

[a] Vide *Rex v. Inhabitants of Ryton*. H. 18 G. 3. 1778, ante, p. 39. *Rex v. Inhabitants of Woodsford*, H. 23 G. 3. 1783, post. and *Rex v. Inhabitants of Edifore or Hedfor*. M. 24 G. 3. 1783, post.

Rex v. Inhabitants of Tarrant Launceston.

Saturday,
June 15th.

TWO Justices by an order remove *Thomas Hatcher*, *Sarah* his wife, and their four children, from the parish of *Tarrant Launceston* in the county of *Dorset* to the parish of *Marnbull* in the same county. The sessions on appeal adjudged the settlement to be in *Tarrant Launceston*, quashed the order, and stated the following case:

That *John Hatcher*, father of *Thomas Hatcher*, the pauper, was born in the parish of *Marnbull* in the said county of *Dorset*; from whence he was bound an apprentice to one *Thomas Clench* of the parish of *Stower Paine* in the said county, and served his apprenticeship with his said master in the said parish of *Stower Paine*—That afterwards in the year 1742, the said *John Hatcher*

The surrender of an old lease, which had been many years in the family, and the taking of a new one, is not a purchase within the meaning of St. 9 G. 3. and will not prevent a settlement being acquired by residence.

1782.

~
 REX
versus
 Inhabitants of
 TARRANT
 LAUNCES-
 TON.

intermarried with one *Mary Ham* of the parish of *Marnbull*, daughter of *Editb Ham* of the said parish. That the said *Editb Ham*, at the time of the marriage of her said daughter with the said *John Hatcher*, was possessed of a certain ancient cottage or dwelling-house in the said parish of *Marnbull*, called *Mud's Plot*, with the out-houses, garden and appurtenances, for a term of 99 years, determinable on three lives.—That, immediately upon the said marriage, the said *Editb Ham* gave her daughter and the said *John Hatcher* an abiding in the said cottage; shortly after which the said *Editb Ham* built a tenement adjoining thereto, and resided partly in the one and partly in the other of the said tenements, till the time of her death in the year 1750.—The said *John Hatcher* and *Mary* his wife occupied the said original cottage during the whole of the said time; but there was no gift or conveyance of the same made by the said *Editb* to the said *John Hatcher*—That the said *Editb Ham* had besides her said daughter, one son, called *William Ham*.—That previous to her death, she said, she meant to give a house to each of her said children, and if either of them chose, on her death, to buy the other part, he would then have the whole. The said *Editb Ham* died intestate, and no letters of administration of her goods and chattels were taken out.—That upon the death of the said *Editb Ham*, *John Hatcher* and *Mary* his wife continued in the occupation of the said original cottage; and the said *William Ham* took possession of the said new tenement.—That in the year 1755 the said *John Hatcher* purchased the said new built tenement of his brother-in-law, the said *William Ham*, for the sum of four guineas; and on the 5th day of *February* in the same year surrendered the old lease of the said cottage, called *Mud's Plot*, with the out-houses garden and appurtenances to *Mary Hussy*, the lady of the manor; who, in consideration thereof and also in consideration of the sum of thirty shillings, granted unto the said *John Hatcher*, his executors, administrators, and assigns, all the said ancient cottage or dwelling-house with the garden and appurtenances thereto belonging, called *Mud's Plot*, and a small piece of ground taken out of the waste adjoining, and for ten years past inclosed as a garden, for the term of 99 years determinable on three lives, at the yearly rent of 2s. 6d. *per annum*.—That by the said renewed lease it was declared, that the said executor or administrators of the said *John Hatcher* should hold the premises after the death of the said *John Hatcher*, in trust for *Mary*, his wife, if she survived him, during the then remain

of the said lease; and after both their deaths for the benefit of their son, *John*, in case he should survive his said father and mother.—That the said *John Hatcher*, the pauper's father, continued in the possession of the said original cottage from the time of the death of the said *Editb Ham* in 1750, and from the time of the renewal of the said lease to the time of his death, which happened in 1767: after which the said *Mary Hatcher*, his widow, continued in the possession of the said premises till the year 1771; when she conveyed the same to her son, *John Hatcher*.—That the said pauper, *Thomas Hatcher*, continued to live with his mother as part of her family for near a twelvemonth after the death of the said *John Hatcher*, his father.

1782.
~
REX
versus
Inhabitants of
TARRANT
LAUNCE-
TON.

Settlement in
Marnhull.

Howorth and *Bond N.* shewed cause in support of the order of sessions; and contended, that, this being merely the case of possession by one of the next of kin without administration taken out, no right became vested in the pauper's father, and no settlement could be acquired by his residence upon the premises at *Marnhull*: that the law had been so settled in the case of [a] the *King v. the inhabitants of Widworthy*: and that this principle had been carried still farther in a late case, that of [b] the *King v. the inhabitants of North Curry*; in which it was decided, that, without administration, a person solely entitled to it, but in whom the whole interest does not vest for his own use, cannot by residence acquire a settlement: that it was true, that it had been determined in the case of [c] the *King v. the inhabitants of Cold Ashton*, that possession, under an equitable title and without administration, for twenty years would give a settlement: that to be sure in the present case there had been a possession altogether for a much greater length of time, but that the cases were very distinguishable: that the continuation of the possession here had been broken at different periods, and had during the principal part of the time been of a character, that could not legally convey the right in question: that till 1750 it was merely permissive; and that from the year 1755, when the surrender of the old lease was made, a new title commenced under a purchase of a less value than thirty pounds: so that there could only be an interval of five years, during which the pauper's father held under any

[a] Tr. 10 & 11 G. 2. 1737. Burr. Settl. Caf. 109.

[b] M. 22 G. 3. 1781. Ante, p. 137.

[c] H. 31 G. 2. 1758. Burr. Settl. Caf. 444.

1782.
 ~~~~~  
 REX  
*versus*  
 Inhabitants of  
 TARRANT  
 LAUNCES-  
 TON.

such equitable title as in the case cited, or under any such title as could give a legal capacity of acquiring a settlement: and consequently, that an enjoyment, whatever its duration might be, under a purchase, the consideration for which was not of the amount required by stat. 9 G., [a] gave no settlement.

*Bearcroft* and *Cowper H.* were in support of the rule to quash the order of sessions: and *Bearcroft* contended, that, though no interest passed by the "abiding" given to the pauper's father, he had yet in right of his wife plainly a derivative title from her mother in the cottages and land, sufficient to entitle him upon forty days residence to a settlement; that it is not necessary that a legal interest should pass: that no person but her two children were entitled to the legal estate: that an administrator could only have holden as a trustee for them: that they had made a partition in conformity both with the law and the declared wishes of their mother: that, at common law, parceners might make partition by parole, and that, as they took no fresh estate, this right was not controuled by the statute of frauds: and consequently, that his settlement, so acquired, had been communicated to his son, the pauper.

He also insisted, that the pauper had a derivative title to a settlement from his mother: that the lease of 1755 to the pauper's father contained a clause, making a provision for his wife and giving her an estate for life in the premises: that this must be taken in the nature of a marriage settlement; and that, as she survived him, and her son, the pauper resided there with her above forty days as part of her family, he thereby gained a settlement.

He insisted that at any rate an enjoyment, which would have given a title in ejectment, could not fail of giving a settlement: that indeed it was said, that this enjoyment had been under a new purchase of an insufficient value; but that, if he had a life interest [b] in it at the time, no enlargement of that interest, how small soever the consideration, could make his title worse: and at the time of this purchase he had such a title as well as the possession.

---

[a] c. 7. s. 5.

[b] It seems to arise by necessary inference, though it is not expressly so stated, that at least one of the lives under the old lease must have been in being at the time of the surrender and renewal; for the case states, that he gave four guineas to his brother for his interest in the half of that, a renewal of the whole of which he obtained a very short time afterwards for the consideration of thirty shillings.

Lord Mansfield, (stopping Cowper H.)

This was not a purchase within the meaning of the statute 9 G. 1.; but only a surrender of the old lease and getting a new one, paying the fine.

Willes, J. After such a length of possession, the case of the *King v. Gold Ashton* is in point.

Ashurst and Buller, Justices, concurring,

Rule absolute,

Order of sessions quashed, and

Order of two justices affirmed.

1782.

REX

versus

Inhabitants of  
TARRANT  
LAUNCES-  
TON.

Rex v. Inhabitants of St. Peter and St. Paul in Bath.

Saturday,  
June 15th.

TWO justices, by an order, remove *William Hill* from the parish of *Lyncombe* and *Widcombe* in the county of *Somerset* to the parish of *St. Peter* and *St. Paul* in the city of *Bath* in the same county; to which parish they adjudged him *likely to become chargeable*. The sessions on appeal confirm the order, and state the following case:

The parishioners of the parish of *St. Peter* and *Paul*, in conjunction with the parishioners of the parish of *St. James* in the city of *Bath*, sometime since purchased a piece of ground situate in the parish of *Lyncombe* and *Widcombe*, and built thereon a house for the reception and maintenance of the poor of the several parishes of *St. Peter* and *Paul* and *St. James* there. In *September* last, the pauper, *William Hill*, being impotent and unable to work, was, together with all the other paupers belonging to the said parish of *St. Peter* and *Paul*, removed from that parish to the said new erected house in *Lyncombe* and *Widcombe*; where he and the rest of the poor of that parish have been ever since maintained at the expence of the parish of *St. Peter* and *Paul*, and without any charge to the said parish of *Lyncombe* and *Widcombe*. The said *Hill*, and all the other paupers, who went into the said new built house, carried with them certificates directed to the said parish of *Lyncombe* and *Widcombe*, signed by the parish officers of *St. Peter* and *Paul*, and allowed by two justices of the peace as the statute directs, acknowledging the said paupers to be settled inhabitants of the said parish of *St. Peter* and *Paul*, and which were delivered to one of the officers of the parish of *Lyncombe* and *Widcombe*. Notwithstanding the certificate of the pauper, *William Hill*, the parish

The construction of the certificate act is not restrained by the preamble; but it extends to all classes and descriptions of poor. With respect to the settlement of bastard children by birth, work-houses seem to be considered as part of that parish, whose property they are; and not of that, in which they are locally situated.

1782. parish officers of *Lyncombe* and *Widcombe* obtained the order in question for his removal, though he had not been chargeable to their parish. The sessions confirmed the order, &c. being of opinion, that the pauper was not the object of the certificate act, and consequently not protected by it.

Rex  
*versus*  
Inhabitants of  
St. Peter &  
St. Paul.

*Howorth, Morris, and Franklin* shewed cause in support of these orders. They stated the question to be, whether it was competent to the inhabitants and officers, of two or more parishes uniting under [a] stat. 9 G. to purchase workhouses for the keeping and employing of their poor, to make such purchases in any other parish, not a member of this union and confederacy; and to send their poor there without the consent of such other parish? They said, that this was a point of very general concern, and a new question upon the law of settlements; or rather a very novel and extraordinary attempt: and they insisted, that it was clear upon every view of the subject, from every act of the legislature, and every authority in the books, that except in [b] very particular cases, the poor were meant to be maintained, and could only receive relief, within their own parishes: that it would not even be contended, that the *general* powers of relieving paupers were by any express words of this act enlarged: that, if no other parishes were mentioned, the *particular* extension of these powers was naturally referable, and could only be referred, to such parishes, as had agreed to unite: and that this construction was supported by every principle of public convenience, as well as by the genius and policy of the settlement law. That, if the inhabitants of a parish were empowered to make such purchases, and to convey their poor into any parish not of the confederacy, nothing could prevent their transporting them, if they thought fit, to the most distant parish in the county; and that, if any consideration were to be paid to the unfortunate objects of these laws, it could not be denied, but that it was a hardship to remove them from the neighbourhood of every relation and friend: that, whatever may be thought of the case of the poor, an injury at any rate is sustained by the parish, to whom they are thus to be sent without any previous knowledge or approbation: that, as an indictment would not lie for a nuisance, unless this remedy were open, unless they might remove them, they were altogether without remedy: that

[a] c. 7. s. 4.

[b] As in the case of *Rex v. Inhabitants of Henington*, H. 17 G. 3. 1777. ante, p. 6.

the injury was manifest; for, if any *one* parish is authorized without consent to send into any other, *all* parishes must be equally so; and all the parishes in a great town may raise their workhouses, bridewells, and hospitals in the same village. Suppose a number of the most populous parishes in *London* should send their poor to *Hampstead*, would such a colony be very acceptable there? Would they add to the value or the protection of property? Or would they in general improve either the health or the morals of a country village? That there was a farther injury to which the parish must inevitably be subjected; the maintenance of every illegitimate child, born in any of these poor-houses: and that this was so obvious a mischief, that, as the act had made no provision against it, it was evident that it could never have been the intention of the legislature to vest in any number of parishes a power of arbitrarily introducing into any others, the whole body of their poor, as inhabitants, together with many of their consequential burthens.

They also insisted, though this pauper had come into the parish under a certificate and had not been actually chargeable, that it was evident from the preamble of [a] the certificate act, that that statute could not warrant this extraordinary experiment: that the principle and object of that act was of a totally different nature: that its first aim was not to make any provision for any pauper in any place; but to secure to them all an undisturbed residence, wherever they could provide for themselves: that its policy was to hold out encouragement and protection, (which out of their own parishes they had not before) to the industrious poor, and enable them to carry their strength and skill to the best market: but that the present was expressly stated not to be the case of a skilful and able bodied person, who wanted employment and was capable of labour, but of a man impotent, and sent in such helpless state for the very purpose of being provided

1782.

Rex  
versus  
Inhabitants of  
St. Peter &  
St. Paul.

[a] Forasmuch as many poor persons, chargeable to the parish township or place where they live meerly for want of work, would in any other place where sufficient employment is to be had, maintain themselves and families without being burthenfome to any parish township or place, but not being able to give such security as will or may be expected and required upon their coming to settle themselves in any other place, and the certificates that have been usually given in such cases having been oftentimes construed into a notice in hand writing, they are for the most part confined to live in their own parishes, township or places, and not permitted to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufactures would employ more hands &c. 8 & 9 W. 3. c. 30.

1782. *for*: that it was impossible therefore, that any construction could be imagined, that would extend the provisions of this act, which had throughout so very different an aspect, to the case of an impotent person coming with all the poor of his parish for the sole purpose of being maintained in another parish, total strangers, and altogether unconnected with them: [a] and that nothing could be more idle than to contend, that this construction would defeat the salutary purposes of this act; as it was impossible to raise a doubt upon the existence of these powers in the hands of the inhabitants of any number of parishes, that should agree to unite.

REX  
versus  
Inhabitants of  
St. PETER &  
St. PAUL.

Lord *Mansfield* (without hearing the other side),

To be sure it was a radical defect in the system of the poor laws, more especially in a commercial and manufacturing country, that the poor should be all confined to their respective parishes. Possessed of industry, vigour and skill, a man who could not find work at home, was prohibited from seeking it abroad. The legislature endeavoured to cure this evil by introducing certificates; under which the pauper is at liberty to go and reside wherever he pleases. And the true principle is, to extend this protection to the utmost latitude. There should be no clog, no restraint. But then the act did not compel the granting of them. The want of workhouses was however soon felt as an inconvenience. They were not long after introduced by the legislature; and, if well regulated, a most desirable mode of relief they are. They supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances, which have chanced to fall within my knowledge, particularly on the Midland circuit, they have reduced the annual amount of the poor rates one half. But this benefit could not within itself be received by every separate district; for, where parishes were small, the expence of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature and provided against accordingly. Though single parishes could only contract for these buildings

[a] Mr. Justice Foster appears to have inclined to this mode of reasoning in *Rex v. the inhabitants of St. George's Southwark*, and afterwards *Rex v. the Inhabitants of St. Olave's Southwark*: "Foster, J. very much doubted, (though he gave no absolute opinion) whether a certificate, given for this particular purpose of admission into an hospital for cure, could be considered as a certificate under that act; which was made with a view to persons coming out of one parish into another, to get their livelihood by their work and labour." H. — 22 G. 2. 1748. Burr. Settl. Case. 283.

within their own limits, yet, where two unite, no restrictions were imposed, the power is general. It is obvious, that the workhouse of a single parish must be most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because, in such case, a spot might be found in some other parish more central and better accommodated to their general convenience, than any part of their united district. The act therefore authorises the purchase any where: and, when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and, if the poor will not go there, they are not intitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself; which was calculated ultimately to reduce expence as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master. But the objection is not warranted by the certificate act. Whatever might be the leading motive in passing that act, that statute authorises the whole body of the poor, of whatever denomination and with whatever object, to leave their own and remove into any other parish; provided they can obtain the protection of a certificate. Contrary to the spirit and policy of the act and not obliged by the letter, the court will not make an exception of a case, which the act itself has not excepted. The true policy is certainly to enlarge and not to narrow the district, within which the poor are to be maintained. As to the objection of its being an injury to property, the introduction of a numerous inhabitation, by increasing the consumption of provisions, must unavoidably add to the value of that land, the produce of which is by such a demand consumed. As to the possibility of a few illegitimate children acquiring by birth a settlement in the parish within which the workhouse stands, it is impossible to foresee every inconvenience; and all that can be said is, that *de minimis non curat lex*.

*Buller, J.*

As to the last difficulty raised, I doubt whether the poorhouse, so occupied and become in this manner the perpetual property of the united parishes, is not to this purpose rather to be considered as part of those parishes to which it so belongs, than of the parish in which it is locally situated; upon

F f 2

1782.

~

Rex

versus

Inhabitants of

St. PETER &

St. PAUL,

1782. the same principle as that of many resolutions [a] in the case of such children born in gaols.  
 Rex *versus* Inhabitants of St. Peter & St. Paul. *Willes and Ashburst*, Justices, concurring, Rule absolute and both orders quashed.

[a] 14 Car. 1638. Worcester Lent Assiz. cor. Sir W. Jones, 2 Bulstr. 358. Rex v. the inhabitants of Luckington. Tr. 8 W. 3. 1695. Comb. 380. Parish of Elsing against the county gaol of Herefordshire. H. 2 G. 1715. 1 Seff. Ca. 99.

Saturday,  
June 15th.

Rex v. Pedley.

Arson is an injury only to the actual possession, and must be so laid: but where a man commits a crime, which is a *malum in se*, the probable consequences whereof are felony, and a felony ensues (as where by setting fire to his own house, he burns his neighbour's) he is guilty of felony.

THIS was an indictment tried at the last Spring sessions for the county of the city of *Bristol*, before Lord *Ashburton*, Recorder of that city.

The indictment was for Arson, and consisted of sixteen counts; one set of which charged the offence as at common law, the other under the statute.

The first count stated, that *Joseph George Pedley* of the parish of *St. Nicholas* in the city of *Bristol* and county of the same city, labourer, on &c. feloniously &c, did set on fire and burn a certain house of *John Freeman*, Esquire, *William Lucy* and *John Gyles*, there situate, against the peace &c.

2d. That the said *Joseph* &c. after the first day of *June* in the year of our Lord one thousand seven hundred and twenty-three feloniously did &c. (as above stated) against the form of the statute &c.

3d. That the said *Joseph* &c. did feloniously, &c. the dwelling-house of him the said *Joseph* &c. against the peace &c.

4th. The same was charged as an offence against the statute.

The 5th. count stated the building to have been the out-house of the said *Joseph*, and charged it as an offence at common law.

The 6th. stated the building to have been the house of the mayor, burgesses and commonalty of the city of *Bristol*, and charged it as an offence at common law.

7th. The same was charged as an offence against the statute.

8th. Count stated, that the said *Joseph* &c. feloniously, wilfully, and maliciously did set fire to and burn the dwelling-house of him the said *Joseph* &c. with intent then and there feloniously, wilfully,



*wilfully, and maliciously, to set on fire and burn the house of one Francis Parry, there situate, and being near unto the said dwelling-house of him the said Joseph, &c. by reason whereof the said house of the said Francis Parry then and there was set on fire and burned. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Joseph &c. then and there feloniously, wilfully and maliciously, did set on fire and burn the said house of the said Francis Parry, in manner and form aforesaid against the peace, &c.*

1782.

Rex  
versus  
PEDLEY.

The 9th. count no otherwise varied the charge in the last count than by stating the building to have been the *out house* of the said *Joseph &c.*

10th. Count stated, that the said *Joseph &c.* unlawfully, maliciously, wilfully, and feloniously did set fire to a certain house of the said *Francis Parry*, there situate, against the form of the statute, &c. and against the peace, &c.

11th. Count stated, that the said *Joseph &c.* feloniously, wilfully, and maliciously, did set fire to and burn the dwelling-house of him the said *Joseph George Pedley* there situate, with an intent then and there feloniously, wilfully, and maliciously, to set on fire and burn the house of *Richard Thomas Combe, Esquire*, there situate, and being near unto the said dwelling-house of him the said *Joseph George Pedley*, by reason whereof the said house of the said *Richard Thomas Combe*, then and there was set on fire and burnt. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *Joseph George Pedley*, then and there feloniously, wilfully, and maliciously, did set on fire and burn the said house of the said *Richard Thomas Combe*, in manner and form aforesaid, against the peace, &c.

12th. Count no otherwise varied the charge in the last count, than by stating the building to have been the *out-house* of the said *Joseph &c.*

13th. Count stated, that the said *Joseph &c.* unlawfully, maliciously, wilfully, and feloniously did set fire to a certain house of the said *Richard Thomas Combe*, there situate, against the form of the statute, &c. and against the peace, &c.

14th. Count stated, that the said *Joseph &c.* feloniously, wilfully, and maliciously did set fire to a certain house of the said *Joseph George Pedley*, with intent then and there feloniously and maliciously to set on fire and burn the house of the said *mayor burgeses and commonalty of the said city of Bristol*, there situate, and being near unto the said dwelling-house of him the said *Joseph George Pedley*;  
by

1782.

REX  
versus  
PEDLEY.

*by reason whereof the house of the said mayor burgeses and commonalty of the said city of Bristol then and there was set on fire and burnt. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Joseph George Pedley then and there feloniously wilfully and maliciously did set on fire and burn the said house of the said Mayor and Burgeses &c, in manner and form aforesaid, against the peace &c.*

15th. Count no otherwise varied the charge in the last count, than by stating the building to have been the *out-house* of the said *Joseph &c.*

16th. Count stated, that the said *Joseph &c.* unlawfully maliciously wilfully and feloniously did set fire to a certain other house of the said mayor burgeses &c. against the form of the statute &c. and against the peace, &c.

Upon the trial, the jury, under the direction of the court, found a special verdict, as follows:

That the mayor burgeses and commonalty of the city of *Bristol* on the tenth day of *August* 1776 were seized in fee of a certain messuage or dwelling-house, situated in the parish of *St. Nicholas* in the said city of *Bristol* and in the county of the same city, and which said messuage or dwelling-house is described in the first and second counts of the said indictment as the house of *John Freeman Esquire, William Lucy and John Gyles*, and in the third, fourth, eighth, eleventh and fourteenth counts, as the dwelling house of him the said *Joseph George Pedley*, and in the sixth and seventh counts, as the house of the mayor burgeses and commonalty of the city of *Bristol*, and in the fifth, ninth, twelfth and fifteenth counts, as the out-house of him the said *Joseph George Pedley*, and being so seized thereof, afterwards by indenture under their common seal bearing date the day and year last aforesaid, demised the said messuage or dwelling-house to *John Freeman, William Lucy and John Gyles* in the indictment mentioned, from the day of the date of the said indenture, for a term of ninety-nine years, determinable with three lives; which said term is still subsisting and undetermined. That the said *John Freeman, William Lucy and John Gyles*, afterwards entered into the said messuage or dwelling-house and became possessed thereof, and afterwards, on the sixth day of *September* in the year of our Lord 1780, demised the said messuage or dwelling-house to the said *Joseph George Pedley* for a term of seven years from the twenty-fourth day of *June* then last past, determinable with three lives; and that the said last mentioned term is still subsisting and undetermined. And that the said

said *Joseph George Pedley* afterwards entered on the said messuage or dwelling-house and became possessed thereof for the term last aforesaid, and occupied and inhabited the same from thence until and upon the sixth day of *December* in the twenty-first year of the reign of our said lord the king. That the said mayor burgeses and commonalty were also on the 25th day of *January* 1762 seized in fee of three certain other messuages or dwelling-houses, situate in the parish city and county aforesaid, adjoining to the said messuage or dwelling-house first mentioned and, being so seized thereof, by indenture under their common seal bearing date the day and year last aforesaid, demised the said three houses to *Richard Thomas Combe*, in the said indictment mentioned, from the day of the date thereof for a term of ninety-nine years, determinable with three lives; which said last mentioned term is still subsisting. That the said *Richard Thomas Combe* afterwards entered on the said three last mentioned messuages or dwelling-houses, and became possessed thereof for the said last mentioned term, and afterwards, to wit, on the first day of *January*, in the twentieth year of the reign of our lord the king, demised the same to *Francis Parry* in the said indictment mentioned, for the term of one year and so on from year to year, so long as the said *Richard Thomas Combe* and *Francis Parry* should please. That the said *Francis Parry* afterwards entered into the said three last mentioned messuages or dwelling-houses, and became possessed of them for the said last mentioned term, and being so possessed, afterwards on the 29th day of *September*, in the twentieth year of the reign, &c. demised one of the said last mentioned messuages or dwelling-houses to one *John Landry*, for the term of three months then next ensuing; who, afterwards by virtue of the said demise entered into and was possessed of the said last mentioned house, and continued in the possession thereof until and upon the said sixth day of *December*, in the said twenty-first year of the reign of our said lord the king: and that the said last mentioned house is the house described in the eighth, ninth and tenth counts of the said indictment, as the house of *Francis Parry*, and in the eleventh, twelfth and thirteenth counts of the said indictment, as the house of *Richard Thomas Combe*; and in the fourteenth, fifteenth and sixteenth counts of the said indictment, as the house of the mayor, burgeses and commonalty of the city of *Lristol*. And the jurors aforesaid on their oath aforesaid farther say, that the said *Joseph George Pedley* and *John Landry*, being so as aforesaid respectively in the possession

1782.

REX  
versus  
PEDLEY.

1782.

~  
 REX  
 v. JUS  
 PEDLEY.

session and occupation of the said messuages or dwelling-houses so as aforesaid demised to them respectively and the said *John Freeman*, *William Lucy* and *John Gyles*, being so as aforesaid lessees of the said messuage or dwelling-house so as aforesaid in the possession and occupation of the said *Joseph George Pedley*, and the said *Richard Thomas Combe* being so as aforesaid lessee of the said three other messuages or dwelling-houses, adjoining to the said last mentioned messuage or dwelling-house, and the mayor burgesses and commonalty of the said city being seized in fee of the reversion of all the aforesaid messuages or dwelling-houses after the determination of the said terms, so as aforesaid granted by the said mayor burgesses and commonalty as aforesaid, the said *Joseph George Pedley*, on the sixth day of *December* in the twenty-first year of the reign of our lord the now king, unlawfully wilfully and maliciously set fire to, and set on fire, the said first mentioned house, so as aforesaid in the possession of him the said *Joseph George Pedley*, with intent wilfully and maliciously to burn and destroy the same; and did thereby burn and destroy great part of the same; and by means thereof the said fire was communicated to the said house, so as aforesaid in the occupation of the said *John Landry*, and burned and consumed part thereof. But, whether upon the whole matters aforesaid found by the jurors aforesaid in form aforesaid, the said *Joseph George Pedley* is guilty of the felonies, or any or either of them in the said indictment specified, in manner and form as by the said indictment is supposed or not, the jurors aforesaid are entirely ignorant; and therefore desire the advice of the same justices last named and the court here. And if, upon the whole matter aforesaid found by the said jurors in form aforesaid, it shall appear to the same justices last named and the court here, that the said *Joseph George Pedley* is guilty of all the felonies in the said indictment specified, in manner and form as by the said indictment is supposed; then the said jurors, on their oath aforesaid, do say, that the said *Joseph George Pedley* is guilty of all the felonies in the said indictment specified, in manner and form as by the said indictment against him is supposed: and that he, at the time of the said felonies committed, had no goods or chattels, lands or tenements, to the knowledge of the jurors aforesaid. And if, upon the whole matters aforesaid found by the jurors aforesaid in form aforesaid, it shall appear to the same justices last named and the court here, that the said *Joseph George Pedley* is guilty of some or of one of the felonies

felonies only in the said indictment specified in manner and form as by the said indictment is supposed in some or one of the counts in such indictment, and is not guilty of some or one of the other felonies in the same indictment specified in manner and form as by such said indictment is supposed in some or one of the other counts of the same indictment, then the said jurors upon their oath aforesaid do say, that the said *Joseph George Pedley* is guilty of such of the felonies only in the said indictment specified, and upon such counts or count only of the said indictment in manner and form therein supposed, as shall so appear to the same justices last named and the court here; and that he the said *Joseph George Pedley* at the time of such last mentioned felonies or felony committed had no goods &c.; and that the said *Joseph George Pedley* is not guilty of such of the felonies specified and mentioned in such of the counts of the said indictment in manner and form therein supposed, as shall so appear to the same justices and the court here. But if, upon the whole matter aforesaid found by the said jurors in form aforesaid, it shall appear to the said last mentioned justices and the court here, that the said *Joseph George Pedley* is not guilty of the felonies or any or either of them in the indictment aforesaid specified, in manner and form as by the said indictment against him is supposed, then the jurors aforesaid do say upon their oath aforesaid, that he the said *Joseph George Pedley* is not guilty of the felonies or any or either of them in the indictment aforesaid specified, in manner and form as he the said *Joseph George Pedley* for himself by pleading hath alledged; nor did he ever withdraw himself for the same felonies or any or either of them &c.

In *Easter* term *Lawrence*, on behalf of the prosecutor, moved for a certiorari to remove these proceedings into this court. *Cowper T.* objected to the application in this stage of the business, contending, that judgment ought to have been given in the court below: but, the special verdict having been found by the direction of the court below, the writ of certiorari, and a habeas corpus to remove the prisoner, were granted. On an early day in this term the gaoler of *Bristol* brought the prisoner into this court, and returned the writ of habeas corpus. The writ of certiorari was also returned and on motion filed. The prisoner was then committed to the custody of the marshal, and an order made to bring him up on the *Saturday* following, when the special verdict was directed to be argued.

1782.

REX  
versus  
PEDLEY.

It was afterwards postponed to this day; when *Lawrence* on behalf of the prosecutor stated, that upon this special verdict there arose three questions for the consideration of the court.

1. Whether at common law or under the stat. [a] 9 G. 1. a man could be guilty of arson by setting fire to a house, in which he had a term in possession; how small soever the extent and duration of his interest therein?

2. Whether a man, who sets fire to his own house, under circumstances that shew general malice, is guilty of arson, if such fire spread and burn a house adjoining?

3. Whether the adjoining house ought not to have been expressly charged to have been the property of *John Landry*, the actual occupier?

And he said, that with respect to the first point, upon a consideration of all the authorities upon the subject, he did not conceive it to be open to argument; it having been fully settled, that the shortest term in the prisoner was sufficient to prevent his being deemed guilty of arson: that arson was defined by all the writers on crown law, to be the malicious burning of the house of *another* man: and that the stat. of 9 G. 1., commonly called the Black Act, had been adjudged not to have been made in this instance with a view of making a new felony of that which was not felony before, but principally for the purpose of taking away the benefit of clergy from such crimes, therein specified, as at that time fell under that denomination; and consequently that this offence could not be considered as a felony either at common law or under the statute: though it seemed to him to be a very extraordinary doctrine, that it should be permitted to an incendiary, because, at the time the fact is perpetrated, he happens to have a few weeks interest in the premises, with impunity to do an irreparable injury to the reversioner and substantial owner of the house he dwells in.

He said, that at the trial *Holme's* case [b] was relied upon for the prisoner, as establishing; that it was not felony to burn a house, whereof a man is in possession by virtue of a lease for years: that it was then answered, that the propriety of that decision had been questioned in the case of [c] *Elizabeth Harris*; and the con-

[a] c. 22. s. 1.

[b] M. 10 Car. 1634. Gro. Car. 376.

[c] July 2, 1753. Foster's Crown Law, 113.

stant practice of convicting persons for burning houses, with intent to charge insurance offices, was also at that time insisted upon; but that since the trial he had been informed, that in a case from the *Old Bailey* in *April* sessions 1780, stated for the opinion of the judges, all the judges present had determined; that it was not arson by common law or by statute, for a termor to set fire to his house; and that they thought themselves bound by the authority of *Holme's* case: that this was the case of one *Andrew Bree*, who had burnt a house, of which he was in possession under a lease for three years from the reversioner in fee; that there had been a similar case of one *Spalding* about the same time: and that for these reasons he should decline arguing upon this point.

But as to the second point he insisted, that by setting fire to and burning the adjoining house, in consequence of having burnt his own, the prisoner was guilty of the felony charged in the eighth eleventh and fourteenth counts: that the doing of an act which was *malum in se* made the delinquent answerable for all the probable consequences: that setting fire to his own house was originally an unlawful act: that the jury had found it was done *unlawfully and maliciously*: and that whether it was done to defraud the reversioner or for any other purpose was not material; the probable consequences were that he must burn the two adjoining houses, and for such consequences he must answer: that, as it was *malum in se*, and found to be done maliciously, it became by consequence [a] a felony; and was as much so, as if the act had been immediate. Suppose any one had been burnt to death, or the prisoner's house had fallen at the time and buried any man in the ruins, would not the prisoner have been guilty of murder? That it has been holden, even upon a sudden provocation, that, if one man beat another in a cruel and unusual manner, so that he die, though he did not intend his death, he is guilty of murder. [b] So if a man give a woman with child a medicine to procure abortion and it operates so violently as to kill the woman, this is [c] murder: that the principle of these decisions was not confined to murder, but was applicable to arson or any other felony: and that the consequences in the instances put are less probable, than that an adjoining house should escape, when a man sets fire to his own.

1782.

REX  
versus  
PEDLEY.

[a] Cro. Car. 376. 3 Inst. 67.

[b] 1 H. P. C. 454. 473, 474.

[c] Ib. 165.

1782.  
 ~~~~~  
 REX
versus
 PEDLEY.

That it has been laid down, that even where a trespass only is intended and a felony ensues, the party is answerable for the felony : and that it is said in *Dalton* [a], that, if a man shoot unlawfully in a hand gun and set another man's house on fire and burn it, this is felony.

Buller, J. But that is contradicted by Lord *Hale*; [b] because in that case there was no intention to burn the house.

As to the third point, the objection that the offence was not properly laid, the adjoining house not having been in any count described as the property of *Landry*, the occupier, he contended; that, it being laid to be the house of the corporation of *Bristol* and also of *Combe*, their immediate lessee, it was sufficiently and properly laid : that, except the occupier, it was stated to be the property of every other person interested therein : and that in point of law the possession of the tenant was the possession of the landlord : that the interest must remain in the first lessee, if the underlease did not divest that interest : that it has been lately [c] determined, that an underlease was not assignment, nor the underlessee liable to the covenants : that therefore there could be no privity of estate between the prisoner and corporation, and consequently that the house in the present instance remained the property of *Combe*, in whom a property was laid : that though, in favour of life, it has been holden, that a termor does not, by burning the house he occupies, burn *ædem alienam*, yet none of the cases had gone so far as to say, that it is a false or insufficient description of the house of a tenant to call it the property of the reversioner : that this is not like the case of trespass, which is founded upon the possession singly, nor that of burglary, which must be laid [d] in *domum mansionalem*; for a mansion-house can only be said to belong to the occupier : but that it was here the house of both or either : and he relied upon the words of *Foster, J.* in [e] *Harris's* case : " the house might with strict legal propriety have been considered as the house of the landlord. Both landlord and tenant have a property : one temporary and limited, the other absolute and perpetual."

[a] Justice, c. 158. p. 506. Edit. 1727.

[b] 1 H. P. C. 569.

[c] *Holford v. Hatch*. E. 19 G. 3. 1779. Dougl. 174.

[d] 3 Inst. 67.

[e] Crown Law, fo. 116.

1782.

Michaelmas Term

23 Geo. 3. 1782.

Friday,
Nov. 15th.

Page, Esq. v. Howard.

THIS was an action of trespass for entering the plaintiff's close. The defendant pleaded the general issue: and the cause was tried before Lord *Mansfield* at the last assizes for the county of *Surry*, when a verdict was found for the plaintiff, subject to the opinion of the court upon the following case:

Justices have power to stop up roads under the general highway act, in cases only where a new road is set out.

In 1774 a road in the parish of *Cobham* in the county of *Surry*, leading towards the parish of *Ockham* in the said county, was lawfully diverted and turned by an order of two justices of the said county, by virtue of the powers given by 13 G. 3. c. 78. [a] s. 19. In June 1782 another road, the place in which the said trespass was committed, in the said parish of *Cobham*, leading towards the parish of *Ockham* and also towards *Chertsey*, *Byfleet* and other places, was stopped up by an order of one of the said justice and another justice for the said county, under the powers given by s. 22. [b] of the said act. A gate was erected by the plaintiff

acres

[a] When it shall appear, upon the view of any two or more of the said justices of peace, that any public highway may be diverted, so as to make the same nearer or more modious to the public &c. and the owners of the lands through which &c. shall consent it shall and may be lawful by order of such justices, at some special sessions &c. to turn, and stop up, and inclose, sell, and dispose of such old highway &c. and to purchase the ground and soil for such new highway &c. by such ways and means &c. in all &c. as herein before mentioned with regard to highways to be widened or diverted sect. 17.

[b] If in any parish &c. where any highway shall be diverted and turned by virtue of the said act, it shall appear to the justices who are hereby authorized to view or inquire into

across the road so stopped under the last order of 1782, and the said gate locked up; and the defendant broke down the same.—
Quere, whether the justices under the said act s. 22. had a power to make the said order for stopping the road, where the said trespass was committed? If they had, the verdict to stand. If not, to be entered for the defendant.

1782.

~
 PAGE
 versus
 HOWARD.

The question upon this case was, whether the justices who made the last order for stopping the road, in the place where the trespass was alleged to have been committed, and who were not both of them the same as those who made the first order, were under s. 22. of the act empowered to make such order?

Bond, G. for the plaintiff contended, that the legislature meant to give an original jurisdiction to the magistrates, who acted under s. 22.: that the power thereby given was a substantive power, and independent of the former clause: that, if it must be the act of the same magistrates, it must be done at the same time also: and, if it is taken to be at the same time, it would in its consequences be absurd; for, at the time of diverting the roads, it may not be possible to foresee what roads it may be necessary to stop up; and that by the express terms of the prior clause it is only where a road has first been diverted, that any authority is given to stop them.

Ross for the defendant insisted, that the power given in the latter clause was not substantive, but merely auxiliary of the former: that it must be exercised at the same time, and by the same justices; and not at any distance of time by others: that, if the words were more doubtful, the analogy from the course of proceeding under the act afforded so clear an illustration of the sense of the legislature, as to remove every thing like difficulty upon the question: that the act directs, that the money, arising from the sale of the road stopped up, shall be applied to purchase the land where the new highway shall be made: that this was now impossible: that it did not appear, that there was here any new road to be purchased: that, if a new set of magistrates might

that there are other highways within such parish &c. besides that so to be diverted and turned, which may, without inconvenience to the public, be diverted into such new highway hereby authorized to be made or into any other highway or highways within such parish &c. and the charge of repairing such highway or highways may be thereby saved to such parish &c. it shall and may be lawful for such justices to order such highway or highways which shall appear to them unnecessary, to be stopped up, and the soil thereof sold &c.

1782. now, at the end of eight years, interfere, they might at the end of 800: that the subsequent clause, therefore was plainly referable to the prior; and that the powers which it gave could be exercised by those only, who enforced the former.

PAGE
versus
HOWARD.

Lord *Mansfield*. However we may agree, that it might have been better, if the necessary remedy had been extended to both cases; yet upon looking into the act of parliament we think we cannot be warranted in putting such a construction. This is not a general power, but tied up to a particular case. The power to shut up roads is given only, where there is a new road to be set out. This shews, that it was meant to be one intire act of the magistrates: that the two clauses make one provision, and that the powers under them were to make but one transaction. The clauses are so connected, that they cannot be separated.

Buller, J. The wording of the latter clause is decisive, that these powers are to be exercised at the same time. It enacts, that if the justices authorised to enquire &c. think, that, besides the roads so to be diverted and turned, other roads may be diverted &c. they may stop them. The orders for this purpose are plainly intended to be made at the same time and by the same magistrates, who were acting under the former clause.

Willes and Ashburst, Justices, concurring,

Postea to defendant.

Tuesday,
Nov. 26th.

Wetherell, Esq. v. Hall.

An equitable as well as legal estate gives a qualification under the game laws: but the clear value of the necessary estate means the value, clear at least of all mortgages or incumbrances created by the owner, or those under whom he claims.

THIS was an action of debt, upon the stat. 5 *Ann.* [a] for the better preservation of the game. The declaration consisted of several counts; the second of which charged the defendant, with using a certain engine called a gun to kill and destroy the game, not being a person qualified so to do. The defendant pleaded the general issue; and the cause was tried before *Eyre B.* at the last assizes for the county of *Durham*; when the jury found a verdict for the plaintiff upon the above count, subject to the opinion of the court upon the following case:

That the defendant, upon his marriage with his present wife became seized in her right of an estate of inheritance, part o

[a] c. 14. s. 4.

which was copyhold, and held of the manor of *Bondgate* in *Darlington* in the county of *Durham*; which, at the time of committing the offence mentioned in the declaration and before, were together of the clear yearly value of one hundred and three pounds: but it farther appeared, that the said defendant and his wife, before the committing of the offence, (to wit) on the tenth day of *May* one thousand seven hundred and eighty, duly surrendered a close of land, parcel of the said copyhold estate, unto *Robert Kelsey* and his sequels in right, upon condition, that if the said *Robert Hall* and *Mary* his wife, their sequels in right, executors or administrators, should and did well and truly pay or cause to be paid unto the said *Robert Kelsey*, his executors administrators or assigns, the full and just sum of four hundred pounds of lawful money of *Great Britain*, with legal interest for the same, at or upon the tenth day of *November* then next, that then and upon such payment in manner aforesaid the said *Robert Kelsey* and his sequels in right should and would resurrender the said premises unto and to the use of the said *Robert Hall* and *Mary* his wife and their sequels in right at their proper costs and charges accordingly; and that the said *Robert Kelsey* was upon the said tenth day of *May* admitted thereto; and the said mortgage still continued upon the same; and that the said close, at the time of committing the offence and before, was of the clear yearly value of fourteen pounds, parcel of the said one hundred and three pounds; and that the interest of the said mortgage had been regularly paid, and the mortgagee had not entered into possession of the copyhold close mortgaged to him.


The question reserved for the opinion of the court was, whether the defendant at the time of committing the offence was duly qualified to use engines to kill and destroy the game?

Lambe for the plaintiff contended, 1. that a *legal* estate of 100*l.* *per annum* was necessary to constitute a qualification to kill game: that here the defendant had no more than an *equitable* estate in the part mortgaged: that such estate cannot be taken notice of by a court of law in the construction of an act of parliament: that by the stat. [a] 22 and 23 *Car.* 2. an estate of an annual value less

1782.

WETHERELL
versus
HALL.

[a] All and every person and persons *not having* lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of one hundred pounds *per annum* &c. are hereby declared to be persons by the laws of this realm not allowed to have or keep for themselves, or any other person or persons, any guns &c. c. 25. s. 3.

1782.  than 150*l.* must be of an inheritable nature to give a qualification :
 WETHERELL and description, was only tenant at will to the mortgagee.
versus
 HALL.

But Lord *Mansfield* intimating, that it would be difficult to support this ground of argument, Mr. *Lambe* insisted,

2. If an *equitable* estate were considered as giving a qualification, that still, in point of *annual value*, the defendant had not, upon the true construction of the act of parliament, an estate sufficient to qualify him. That the words of the act were; “ the *clear* yearly value of 100*l.* : ” that this could not mean the gross value of the estate, but must mean the net income : that such it could not be, if, by incumbrances of any sort, the issues and profits were brought within that sum : that the object of the legislature was, to intitle those only, whose independence, arising from the produce of their lands, would enable them to use these rights for the purpose of amusement : that, upon comparing the value of land at the time this law passed with its present value, it would be found that the measure of this independence had already been reduced much below the intention of the legislature : that if the construction contended for were admitted, no degree of interest whatsoever in the produce of lands would be necessary, and the intention of the legislature must be totally frustrated ; inasmuch as the holder of an estate, whether he charged it himself to its utmost value or had it transferred to him under such charge, without having, or without ever having had, an income arising out of land to the amount of one farthing, must in such case be intitled.

Lord *Mansfield* calling upon the other side,

Chambre for the defendant stated the only question to be, whether the interest of the mortgage was to be considered as such a reduction of the annual value of the estate, as would destroy the defendant's qualification ? and he contended, that this was a penal law, and would not therefore be extended by construction : that it was besides a general law and in its terms does not require the party to have a *legal* estate : that the words of the act are “ not having &c. ; ” within which words an equitable estate is sufficient : that in deciding on points of this nature the substance ought principally to be regarded : that the *cestuy que trust* was substantially the owner : that courts of law in many instances advert to the practice of a court of equity ; as in the common case of a trustee, who is not permitted to eject his *cestuy que trust*.

See

See then how a mortgagor is considered there? The mortgage is in substance a specialty debt, the equity of redemption is considered as real estate, and descends to the heir of the mortgagor; who is considered as a debtor, and his personal assets liable in the first instance to discharge the mortgage: and, though at law the heir of the mortgagee takes a legal estate, yet the personal representatives are considered as intitled to take the benefit and receive the mortgage debt.

1782.

WETHERELL
versus
HALL.

He farther insisted, that a mortgagee can never get possession, if the mortgagor is ready to pay the money: that by statute [a] it may be paid *impendente lite*: and that, if the legal estate only were to be regarded, an estate of a thousand pounds a year, mortgaged in fee for one hundred pounds, would not furnish a qualification.

That the only question that remained was, whether the interest of the mortgage money was to be considered as an outgoing, that would reduce the value of the estate below 100%.? and he contended, that the interest was not a thing issuing out of any part of the estate in the nature of a rent or service: that both principal and interest were a debt: that the interest must be considered as a debt on the personalty, just as the principal is considered as a debt: and that the estate was neither made of greater or less value by the mortgage, but was merely a pledge for the payment of the debt: that the legislature therefore, when they used the words "clear yearly value," meant to advert only to the value of the estate itself, and not to the quantity of interest, that any person might have in it; the thing itself without any regard to the charge upon it; provided only that the party was in possession: that in the same manner, in the case of a mortgagee in possession, there can be no doubt, but that he is intitled to kill game: and the court in such case will not inquire into the amount of his interest money, of the sum advanced to the mortgagor upon his land; provided the security, the land itself, be of the annual value, which the law requires: that the court, before they pronounced, would well weigh the consequences of such a doctrine, as is contended for: that the justices, who must inquire into this in a summary way, must make all persons of whatever ostensible estate, disclose their private circumstances; which would be too great an extension of a law, already considered in many instances as tyrannical: that a

[a] 7 G. 2. c. 20. s. 1.

1782.

 WETHERELL
versus
 HALL.

rent charge indeed or services, issuing out of an estate, as matters of notoriety, might perhaps be considered by the justices; but of such things only, as were ostensible, could they take cognizance: that, if every private family transaction in money concerns were to be laid open, if it could be seriously argued, that such discussions were proper subjects for a summary jurisdiction, it would be investing justices and informers with powers of harrassing the country, as far beyond any known precedent, as it was beyond the intention of the legislature: that their object had not at any time been an inquiry into debts, but the actual possession of, and interest in, landed property, and the visible amount and extent of that property.

That, as there was no authority directly upon this subject, it was proper to consider the question by analogy to the statutes *in pari materia*: that most statutes in these cases require a qualification altogether in land; but that two statutes in the reign of King James intitle the party under personal as well as real qualifications: that the statute 2 Jac. [a] enacts, that no one, "except such person or persons, which shall be seised &c. of *lands*, tenements or hereditaments of the *clear yearly value* of ten pounds by the year or more, *over and above all charges and reprises; or be possessed of goods or chattels to the full value of two hundred pounds to his own use*, shall be qualified &c.:" that it appears from hence, that the mere having in one's own right and commanding the use of personal property is sufficient to give a qualification, whatever may be the amount of such a proprietor's debts; consequently that when the same statute requires the having of a real estate of a *clear yearly value*, it must mean an estate, which would let for a clear sum without any deduction to be allowed to the occupier, and exclusive of charges and reprises issuing out of the land; and that, if debts were not to affect the *full value*, mortgages, which were no more than debts, ought not to reduce the *clear value*; and that, such not being charges strictly issuable out of the lands, no inquiry was meant to be given into them: that in like manner the stat. 3 Jac. [b] qualifies persons "having any manors, lands, tenements or hereditaments of the *clear yearly value* of 40 l., or worth in goods and chattels 200 l.:" that the stat. 13 R. c. 13., which was the earliest upon this subject, and

[a] c. 27. s. 3.

[b] c. 13. s. 5. This section respects shooting deer and conies only.

which

which must have been referred to by the framers of the above acts, qualifies laymen, *having* lands or tenements to the *value* &c., and clergymen, *advanced* to the *value* &c.; and that, as the title of this act was "none shall hunt, but they which *have* a sufficient estate," a collateral charge could not affect the privilege; and, if there was nothing strictly issuing out of the land, the *having* here must be sufficient.

1782.

WETHERELL
versus
HALL.

That in other cases, where the legislature have used the same language, mortgages have not by construction been considered as incumbrances that reduced the value of the estate: that by stat. 8 H. 6. c. 7. knights of shires are to be chosen by "people &c." whereof every one of them shall *have* free land or tenement *to the value &c. above all charges*: that not only mortgages were never construed to affect this right, but even so late as the 7th and 8th of W. 3, the legislature [a] declared, that "the mortgagor or *cestuy que trust* in possession shall and may vote for such estates, notwithstanding such mortgage or trust."

Buller, J. But he must swear, that he has forty shillings a year, above every charge payable in respect of them.

Chambre, But this is by the express provision of [b] subsequent statutes.

Lord Mansfield. The privilege here is given to property; and the *cestuy que trust*, the mortgagor, is really the owner: the trustee, the mortgagee, is merely nominal. We consider the defendant's interest in this court just as it would be considered in a court of equity. It is an interest subject to the payment of the mortgage: it is a qualification of property; and, though it is not necessary, that he should have a legal estate, he must have such property in the land, as shall produce a clear income of 100*l.* *per annum*; or it might be carried so far, as that he might have nothing, and yet enjoy the privilege. What then are a mortgagor and mortgagee in Chancery? One the owner, and the other, as having a charge upon the land; and the charge goes along with it.

Buller, J. In the case of rent-charges the cognizance of the justice is admitted; and in many others they must interfere, as in contracts between landlord and tenant. Neither is there any pre-

[a] c. 25. f. 7.

[b] 18 G. 2. c. 18. f. 1. and 19 G. 2. c. 28. f. 1.

1782.

WETHERELL
versus
HALL.

tence on the part of the defendant to complain of hardship. Possession is *prima facie* evidence of property. The defendant must therefore be presumed to be the intire owner. The hard task lies upon the other party; who must make proof of the contrary. If the justice may receive proof of rent-charges, and services, what should prevent his doing the like as to mortgages? The only point then is, whether the words "clear yearly value" mean "clear yearly value to the person in possession?" The words of this act would by themselves leave little room for doubt; but, when explained and supported by the statutes of K. James in *pari materia*, the words of which are, "over and above *all* charges and reprises," it can no longer admit of question, but that it must mean clear value to the person in possession: for, by the common rule of construction, all statutes upon the same subject are considered as making one system of law; and consequently the words in the two last statutes must be referred to the statute in question.

Willes and Ashurst, Justices, concurring,
Judgment for the plaintiff.

Hilary Term

23 Geo. 3. 1783.

24 QBD 419.

Friday,
January 24.

Rex v. Inhabitants of Woodsford.

On removal of a widow, it is enough in the first instance to prove her maiden settlement.

TWO Justices by an order remove *Mary Pitman*, widow, and her four children from the parish of *Woodsford* in the county of *Dorset* to the parish of *Wimborne Minster* in the same county. The sessions on appeal adjudged the settlement to be at *Woodsford*, quashed the order, and stated the following case:

2

That

That by a rule of the quarter-sessions for the said county of *Dorset* it is ordered, that, upon all cases of appeals against any order or orders of removal, the appellants shall begin, and in the first place shew some settlement of the pauper or paupers out of the parish of the said appellants; and thereupon the respondents shall go into their case. Upon the hearing of the above appeal, in pursuance of the said rule, the appellants produced a copy of the register of the birth of *Mary Scutt* in *Asspuddle*; and the pauper, *Mary Pitman*, swore, that *Mary Scutt* was her maiden name. The counsel on the part of the respondents objected, that this was not sufficient; but that the birth of the pauper's husband, *Robert Pitman*, or some other settlement of his, ought to have been shewn; and farther, that to identify the said *Mary Scutt*, it was necessary for the appellants to prove the marriage of the said *Mary Scutt* with the said *Robert Pitman*. The court adjudged, that the proof of the birth of *Mary Scutt* was sufficient; and that the *onus probandi* of the marriage lay upon the respondents, in order to prove their case, and quashed the said order of justices.

1783.
Rex
versus
Inhabitants of
WOODSFORD.

Cowper, H. moved for a rule to shew cause, why this order should not be quashed, upon the ground, that, the pauper having been removed in the character of a widow, such order imported, that it was a removal to the place of her late husband's settlement: that, unappealed from, it would be conclusive evidence of his settlement: and that as this must consequently have been the only point meant to have been brought in issue between the parties, the maiden settlement of the woman was nothing to the purpose, and did not apply to the question before the court.

Sed per curiam.

It may be, the husband had no settlement; and if he had, till discovered, her own would in the mean time remain. You were not surprised; but could not or would not answer it. It is enough in the first instance. The sessions have done right.

Motion denied.

Vide *Rex v. Inhabitants of Ryton*, H. 18 G. 3. 1778. ante p. 39. *Rex v. Inhabitants of Hensingham*, Tr. 22 G. 3. 1782, ante, p. 206. and *Rex v. Inhabitants of Edisore or Hedfor*, M. 24 G. 3. 1783. post.

Rex

1783.

Wednesday,
Feb. 5th.

Rex v. Justices of Peterborough.

It must appear upon the case stated, that a place either is *legally* and *actually* a vill, or at least that it is *so reputed*, to warrant an application for a mandamus to appoint overseers. The sites and areas of antient cathedrals, colleges and inns of court, are extraparochial.

WALLACE had obtained a rule to shew cause why a mandamus should not issue, directed to *Charles Tarrant*, dean of *Peterborough* and the Reverend *William Browne*, justices in and for the liberty of the soke of *Peterborough* in the county of *Northampton*, to appoint overseers of the poor of a certain vill or township called *Peterborough Minster*, otherwise the *Minster*, within the said liberty.

The facts upon the affidavits in support of the rule were, that within or close adjoining to the city or town of *Peterborough* is a certain place, called *Peterborough Minster*: that it has always been extraparochial, and always had a number of poor belonging thereto: that such poor had till the seventh of *May* last been always maintained, as the poor belonging to such extraparochial place, by the directions of the dean and chapter of the said place, called the *Minster*; and out of some fund belonging to them: that on the ninth of *May* last the chapter clerk of the said dean and chapter, being applied to to receive *Esler Key*, widow, a pauper belonging to the said extraparochial place and who had come by pass to the parish of *St. John the Baptist*, within the said city or town, and close adjoining to the said *Minster*, as a rogue and vagabond, declared; that the said dean and chapter had already so many poor, that they did not know how to maintain them; and that, though this pauper did belong to the *Minster*, he should not take her in, as there were no officers appointed within the *Minster* to whom any order of removal could be directed; and that he meant to avail himself of such want of appointment: that, upon a statement of these facts, application was also made to the defendants and to two other justices of the peace for the liberty of the soke, all of whom resided within the said extraparochial place called the cathedral of *Peterborough* or *Minster*, to appoint an officer for the same and to grant their order of removal directed accordingly: that the said justices refused so to do, no officer having at any time before been appointed for such place; though it was sworn they believed, that the pauper of right belonged thereto: that the said extraparochial place contains upwards of forty-six acres of ground; known by several distinct names, viz. the *Minster-Close*, the *Minster-Square*, the *Vineyard*, &c., and, together

together with the bishop's and six prebendal houses, twenty-five dwelling houses at least, exclusive of poor houses; and that these houses are inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or by strangers to the cathedral, and those generally persons of fortune: that the said twenty-five dwelling houses contain upwards of 124 persons: that there are also in the said extraparochial place several poor houses, containing a number of poor, who have by birth, marriage or servitude, acquired a settlement therein; and who from some fund belonging to the dean and chapter receive as a maintenance the sum of two shillings or eighteen pence by the hands of the chapter clerk together with their division of the sacrament money, amounting to sixpence per week over and above the aforesaid payment: that there is also in the said *Minster* a grammar school with an annual endowment for the support of the master, payable out of some fund belonging to the dean and chapter; by whom the said master is appointed: that within the said *Minster* there is a place for the performance of divine worship and for the burial of the dead; and that it appears from the register there kept for the purpose, and which is distinct and separate from that of the parish church of St. *John* Baptist, that from the year 1756 to the end of the year 1781 there have been 42 marriages and 48 baptisms, and from the year 1757 to the end of the year 1781 58 burials had therein: that the land and buildings situate within the said *Minster*, from a valuation taken thereof, are of the annual amount of 400*l.* at least: that the arrears of interest due upon the sum of 200*l.* lodged in the hands of one of the deponents in support of this rule in the character of trustee, and which had devolved upon three poor girls who had become chargeable to the said extraparochial place, were demanded of him by the chapter clerk of the said cathedral or *Minster* and by him paid accordingly, and a receipt given as follows:

Received 6th *November* 1782 of *Roger Parker* Esq. the sum of 2*l.* 3*s.* 8*d.*, the balance of his account with *Jeremiah Stamford*, for interest money in full to the 11th day of *September* last, and to be by me applied towards the maintenance of the three children of the said *Jeremiah Stamford*, who have become chargeable to the dean and chapter of *Peterborough*.

Nathaniel Hudson, Chapter Clerk.

2*l.* 3*s.* 8*d.*

I i

That

1783.

REX
versus
Justices of
PETER-
BOROUGH.

1783.

~
 REX
 versus
 Justices of
 PETER-
 BOROUGH.

That in the memory of another of these deponents, who was 86 years of age, there had been several other poor houses inhabited within the said extraparochial place, but that some of them were fallen down, and that others had been taken down by order of the dean and chapter to prevent their being inhabited.

Against the rule it was sworn by the defendants, doctor *Tarrant* and doctor *Browne*, the dean and one of the prebendaries of the cathedral church of *Peterborough*, that the precinct or close of the cathedral church of *Peterborough*, described in the affidavit in support of the rule, by the name of the *Minster*, is extraparochial; and is not a township or vill or was ever so reputed: that there have been poor persons many years resident within the said precinct; and that within their precincts the dean and chapter are by their statutes required to distribute in charity the sum of 20 *l.* annually: that it appears by a register book kept for that purpose that till the year 1737 the aforesaid sum and no more had been annually so applied from the chapter fund; and that this sum together with the sacrament money had been sufficient for the support of the poor then belonging to, or inhabiting, the said precinct: that it appears from the same book that in the year 1737, this sum proving insufficient, a farther sum was expended for their relief, and that since that period the expence of maintaining the poor belonging to the said precinct has in some years amounted to upwards of 80 *l.*; but that the dean and chapter have, although without any other appropriated fund, defrayed the whole expence: that this burthen has tended to the diminution of the revenue allotted for the stipends of the several officers of the said cathedral, the repairs of the fabric and other contingent expences: that the land and buildings within the said precinct, exclusive of the bishop's palace and other official houses, belong partly to the bishop and partly to the dean and chapter; and are all (except two houses which are the property of private persons) occupied by their respective lessees: that there never was any constable or other civil officer appointed or chosen for the said precinct or close, or any overseer of the poor or churchwarden; nor have the inhabitants ever contributed to the relief of the poor within the precinct or been called upon so to do: that, upon the application made to these deponents to appoint an overseer of the poor for the precinct of the cathedral church of *Peterborough* and to grant an order of removal &c., as there appeared no trace or vestige of any such office in any of the writings or registers belonging to the

the said church, and as no such officer or churchwarden ever had to their knowledge been appointed, they were of opinion, that they had not authority to make such appointment; and therefore declined to comply with the requisition made.

Howorth and *Blake* shewed cause against the rule for a mandamus; and insisted, that the precinct in question, having been formerly the site of a religious house and now that of the cathedral, and being also that part of the estate and revenue of the church which was set apart for the residence of its highest ministers and officers, was extraparochial; and not in its nature that sort of establishment which had ever in any instance been subjected to temporal cares and parochial duties: that other places, set apart for studious retirement, though not expressly dedicated to religion, have ever had a similar protection: that if the bounty of the statutes and the humanity of the present possessors had so long induced them to make a voluntary provision for the poor within their precinct, it could hardly be thought a legal, any more than it was an equitable, ground of subjecting them to unprecedented burthens, because the extent of their benevolence and charity had been carried beyond all example: that it was a decisive answer to this application, that, except upon the face of the rule, no charge appeared that this place was either a township or vill: that in the case of [a] the *K. v. inhabitants of Denbam* it is holden essential, that the place "at the least should have the reputation of a vill or town" to be intitled to have overseers appointed within it under stat. 13 & 14 Car. 2. c. 12.: that, nothing of this sort being disclosed by the affidavits, the authority of the case of [b] the *K. v. Justices of Bedfordshire* would govern the present, and consequently this rule be discharged with costs.

Wallace in support of the rule insisted, that what is a vill within the act of parliament is matter of law; and, as is laid down by *Hardwicke* Ch. J. in the *Denbam* case, "must be left to the judgment of the court, [c] upon the circumstances of the

1783.

REX
versus
Justices of
PETER-
BOROUGH.

[a] E. 8 G. 2. 1735. Burr. Settl. Cas. fo. 38.

[b] E. 22 G. 3. 1782. Ante, p. 167.

[c] So it is laid down by the same learned judge and the whole court with respect to fraud, in the cases of *Rex v. Inhabitants of Tedford*, Tr. 8 & 9 G. 2. 1735. Burr. Settl. Cas. 57. And *Rex v. Inhabitants of St. Nicholas in Harwich*. H. 15 G. 2. 1741. Ib. 171. And so generally, upon returns made by the justices at sessions, by Lord *Mansfield* and *Denison* and *Foster*, J. in the case of *Rex v. Gayer, esquire*. H. 30 G. 2. 1757. Burr. Rep. 245. Vide also *Rex v. Inhabitants of Eyford*. H. 25 G. 3. 1785. Post.

1783.

REX
versus
 Justices of
 PETER-
 BOROUGH.

case stated :” that calling a place a vill is not making it such : that when the whole facts, that can induce a belief or warrant a conclusion upon the premises, are brought forward for the consideration of the court, what the party swears as to opinion or reputation must be immaterial : that, unless this were so, the return of special circumstances was a nugatory and ridiculous ceremony : that the facts disclosed upon these affidavits afforded ample and abundant proof, that the place in question had been properly denominated a vill : that not only in the size of the place and number of the houses every requisite had been satisfied, that had ever been holden necessary to constitute a vill ; but that the rites of marriage, baptism and burial were constantly performed there : and that the privilege of administering the sacraments, especially that of baptism and the office of burial, are compleat evidence of parochiality : that their having uniformly and immemorially maintained their own poor, contrary to the usage of these establishments, was accepting a burthen, which it was not very easy to suppose they would have submitted to upon any other principle, than that of conviction and a sense of duty and obligation : that, this district having to the great improvement of the revenues of the church been built upon and leased out to men of fashion and fortune, strangers to the church and not intitled to any ecclesiastical privileges and immunities, but in whose families numerous settlements by service are necessarily acquired, the duty and obligation of providing for them was as strong in equity as it was in point of law : that it was true, that in the *Bedfordshire* (Sir George Osborn’s) case, the court said, that, before they would compel magistrates, in whom the law has lodged a discretionary power to act against their own impressions of duty, they would at the least require that the affidavits in support of such an application should say, that the place had the reputation of being a vill : but that that had been said in a case, in which, as brought before the court by affidavit, there was a total failure of all those circumstances which could warrant the court in drawing the conclusion, that the place in question was a vill ; and that the leading circumstance, which pointed that way, had been expressly charged by the court to have been an imposition. That all other cases in the books, in which it has even been hinted by the court, that it was necessary to state that the place was a vill by reputation, were cases in which there was a defect of other proof necessary to found the conclusion of its being

being actually and legally such; and were also cases, in which some farm or mansion, antiently a single house, had newly been turned into several tenements, or to which one or two cottages had been added for the accomodation of labourers or servants: but that here there were sixteen separate and independent household establishments of persons of fortune.

Lord *Mansfield*. This space comprehends no more than the site of the cathedral and the area round it; and consequently was in former times within sanctuary, and as such sacred and inviolable as the church itself. In modern times to be sure there is no such thing as sanctuary; but these places have throughout all ages without interruption enjoyed those immunities; as *Westminster Abbey* now does and other places of the like nature. The antient inns of court, though not exactly upon this principle, have also at all times been privileged: and a similar exemption was not questioned in a late case, that of [a] the *K. v. Gardner*; with respect to that part of the court and garden ground of *Catharine Hall* in the university of *Cambridge*, which lay within the old and extraparo-chial part of that foundation. Would you say, that *Cristchurch* in *Oxford* [b] is a vill? I am not satisfied from this affi-

1783.

~
 REX
versus
 Justices of
 PETER-
 BOROUGH.

[a] Tr. 14 G. 3. 1774. Cowp. 79.

[b] There seems at this time of day to be no very reasonable, even if there were any legal, ground to consider any of our antient colleges or the closes or sites of our cathedrals, as such, places, in which it would be proper for the justices under stat. 13 & 14 Car. 2. c. 12. to introduce parochial regulations. And yet, were not these societies in general regulated very differently from that of *Peterborough*, it seems to be rather questionable, whether the exemptions they at present enjoy could be long supported. In the universities there is no other description of persons whatsoever admitted into the colleges, but the servants, or necessary officers of the matriculated members and their families; none but those who are poor, or derive a profit or subsistence from the body into which they are admitted: the very reverse of which is the case of this precinct; where they, who are admitted, are wealthy, and contribute largely to the support of the body that receives them; to whom they are not at all necessary, or bear the smallest relation.—While the space, of old allotted to the conveniences of these bodies, continues to be applied to the original purposes of the foundation, while it is occupied by their officers or any person fairly and properly bearing a relation to them, it may be, that they ought to continue privileged beyond the public at large: but, when they depart from the object of their institution, admit strangers into their sanctuary, derive a considerable revenue from such admissions, and burthen other parishes with the settlement of all the servants of these inmates, it cannot be within the spirit of the privilege, that they should be permitted to make sale of it; and, for the purpose of enhancing the value of their property, convert that, which could only have been meant as a benefit, in the nature of an exemption, to *themselves*, into an injury to the public at large, and a benefit, and an exemption from the payment of a general tax, to *all their tenants*, resident upon that spot.

davit

1783.

REX
versus
Justices of
PETER-
BOROUGH.

davit that this place is a vill; and the party applying don't even call it so.

Buller, J. As the party applying does not venture to assert, that this place had ever any civil officer, or was ever even reputed to be a vill (the last of which, where the facts of the case do not within some clear principle of law shew the place to be of that denomination, the court has holden to be indispensibly necessary for the purpose of founding an application for a mandamus, this case falls within that [a] which has been cited, and the rule must be pronounced accordingly.

Willes, and Ashburst, Justices, concurring,

Rule discharged
with costs.

Vide *Rex. v. Justices of Bedfordshire*. E. 22 G. 3. 1782
Ante, p. 167. *Rex v. Inhabitants of Eyford*. H. 25 G. 3.
1785. post.

[a] *Rex v. Gardner*, Cowp. 79.

Wednesday,
Feb. 5th.

Rex v. Franklyn.

Taking an active part in company with armed persons, in defiance of the laws of customs and excise, is a capital felony within the Stat. 19 G. 2. c. 34.

PARTRIDGE had obtained a rule to shew cause why a writ of habeas corpus should not issue, directed to the keeper of castle of the city of *Norwich*, to bring up the defendant, who had been committed under Stat. 19 G. 2. [a] for the punishment of pergoing armed or disguised in defiance of the laws of customs excise, for the purpose of being bailed. The commitment charged, that he had *with others armed* aided and assisted in rescuing customs goods &c. and assaulted &c. and wounded and m &c. an officer of excise in the execution of his duty.

[a] Which enacts, "That if any persons, to the number of three, or more, a fire arms, or other offensive weapons, shall &c. be assembled in order to be aiding ing &c. in rescuing or taking away prohibited or uncustomed goods, after seizing any officer or officers of the customs or excise &c.: or in case any persons, to the three, or more, *so armed as aforesaid*, shall &c. be so aiding or assisting &c. or hinder, obstruct, assault, oppose or resist any of the officers of the customs or excise his majesty's revenue, in the seizing or securing any such goods &c. then every offending, being thereof lawfully convicted, shall be adjudged guilty of felony ~~and~~ death as in cases of felony, without benefit of clergy." c. 34. s. 1.

Mr. *Partridge* made the application for a habeas corpus upon the ground, that the commitment did not charge any offence against the statute: that it stated only that the prisoner did certain acts *with others armed*; but did not alledge that he *personally* was armed, as the act required: and this fact was supported by the affidavit of the prisoner.

1783.
~
Rex
versus
FRANKLYN.

The court, though they refused to grant the writ in the first instance, intimating their opinion, that it was not necessary to constitute the offence, that every person concerned should be armed, yet as it was a capital felony, granted a rule to shew cause, that the point might be considered and settled.

Kenyon, Attorney General, now shewed cause against this rule; and insisted, that the objection very much resembled a distinction, that had been attempted on the Black Act [a]; under which it being necessary that the face should be blacked to subject the offender to its penalties, it had been contended, that, where the face was covered with crape, or a black mask used, the words of an act so penal were not satisfied.

Partridge. The preamble also here shews the object of the act, and that it was aimed at persons with arms in their hands.

Attorney General. But another branch of the preamble speaks of wounding and maiming excise officers in the execution of their office, without mentioning arms.

Partridge. But it adds, "so associated and assembled as aforesaid" [b]; which can receive no other construction than as referring to their being armed.

The *Attorney General* then insisted, that whether the charge of maiming, stated in the commitment, would or would not support it, it was not necessary within the meaning of the act, that

[a] 9 G. 1. c. 22. s. 1.

[b] The words are: "Whereas divers dissolute persons have associated themselves, and entered into confederacies to support one another, and have appeared in great gangs in several parts of this kingdom, carrying fire-arms or other offensive weapons, and when so assembled have been aiding and assisting in running, landing, or carrying away prohibited or uncustomed goods or goods liable to duties of excise &c., or in obstructing the officers of the revenue in the execution of their office &c. And whereas several officers of the customs and excise &c. have been wounded, maimed, and some of them killed, when in the execution of their office, or otherwise, by the said dissolute persons, so associated and assembled as aforesaid, &c."

every

1783.
 ~~~~~  
 Rex  
*versus*  
 FRANKLYN.

every person active and concerned in riotous proceedings of this nature should individually be armed: that, though the prisoner had denied having any concern in this outrage, he had on the contrary an affidavit, stating not only that the prisoner was at the head of the party and encouraging them, but also that he was armed; so that, even if the court should think that the statute could only affect persons, who were themselves armed, and consequently that the present commitment was defective, this application must prove nugatory; as before the writ of habeas corpus could be returned, a proper warrant of detainer should be lodged against the prisoner.

Lord *Mansfield*. To be sure that may be done: but the prisoner does not deny, that he was there with armed persons; and, if he was active, it is not necessary under this act, that such individual should be armed. His Lordship added, that, independent of the Attorney General's affidavit, there was no ground for this application; for the court never grants the motion, upon the merits as disclosed by the prisoner's affidavit.

*Willes, Ashburst, and Buller*, Justices, concurring.

Rule discharged.

### Rex v. Compton et al.

Conspiracy by parish officers and others in low situations and circumstances, to marry a poor woman, settled in one parish, to a man settled in another, is not a proper subject for an information. Otherwise, if the defendants are of any situation in the country, good informations may be laid.

*COCKELL* moved for an information against the defendants, overseers and inhabitants of the parish of *Doncaster* in the county of *York*, for conspiring to prevail upon a soldier to marry a poor woman of their parish, then big with child, for the purpose of throwing the burthen of her maintenance from themselves upon the township of *Kirkby* in that county, in which township her husband, the soldier, was settled.

The affidavit, as stated by Mr. *Cockell*, very strongly impeached the conduct of the defendants.

*Sed per Lord Mansfield* and the court.

Great inconvenience has been felt from the practice of obliging persons in low circumstances to shew cause against informations, and to come afterwards before this court from perhaps a very remote part of the country, and consequently at a great expence, to receive judgment. To be sure this appears to be a very fit subject for prosecution; but justice may effectually be done otherwise;

wife; and it will be more proper in all [a] such cases, to take the common remedy and proceed by way of indictment. [b].

Motion denied.

1783.

REX  
versus  
COMPTON.

The mayor and town-clerk of *Doncaster* were included in this application; but the court thought, that the affidavit did not sufficiently reach them. If it had, Lord *Mansfield* said, the court would have granted the rule against them.

[a] So, in the case of the *K. v. Slaughter and Batt*, the overseer and the churchwarden of the parish of *St. Mary Woolchurch Haw* in the city of *London*, upon the motion of Mr. *Sylvester*, who cited the cases in *Strange* and other more recent manuscript authorities, for an information against the defendants for conspiring to marry a poor woman of their parish to a person in the workhouse of another parish, *Buller J.* said, No such rule has been granted, since I sat here. The court has come to a resolution, not to grant informations in these cases. *E. 25 G. 3. 1785, Wednesday, April 20th.* This application was also made without effect in a very gross case, that of a man under duress married to an idiot. *Rex v. Upsdale and Winn*, overseers of the poor of the parish of *New Alceford, Hants, et al.* Upon the motion of Mr. *Jekyll*, *M. 28 G. 3. 1787. Monday, November 26, per Ashurst, Buller, and Grose, Justices.*

[b] Till a few years before this determination, as the parish in which the husband lived was by this criminal conduct of the inhabitants of the other parish deprived of all relief upon the question of settlement, if the affidavits in support of the application established the fact, the information was usually granted; except where the woman, settled in the defendant's parish previous to her marriage, was with child by the man to whom the defendants procured her to be married.

Rex v. Inhabitants of Seagrave.

Saturday,  
Feb. 8th.

TWO justices remove *Thomas Brown*, *Ann* his wife, and their two children, from the parish of *Barkby* in the county of *Leicester* to the parish of *Seagrave* in the same county. The sessions on appeal confirm the order, and state the following case:

That the pauper was hired from old *Martinmas* to old *Martinmas*: that on *September* the 25th he told his master, he was going to be married: that his master made no answer: that he went away on *Saturday* and was married: that upon his return he had no intention of quitting his service: that the master said, he would not employ him any longer: that he said he would go, if he would pay him his year's wages: that the master refused it; and said, he would only pay him for the time he had served; and asked him if he would take his wages, or go before a justice: that the

The consent of a servant given in express terms to the dissolution of his contract, unless fraud is stated, must be conclusive.

K k

master

1783.  
 REX  
*versus*  
 Inhabitants of  
 SEAGRAVE.

master set out about his business to his farm at *Barrow*; when the pauper called him back, and said he would take the money for the time he had served; and *that he parted with his own consent.*

The two justices and court of quarter sessions had concurred in opinion, that, as the quitting of the service in this case appeared to be only an acquiescence by a servant in the interested commands of one who was in the habit of exercising acts of authority over him, and that the servant had submitted to a small deduction of wages only to avoid going, as he otherwise must have done, before a magistrate; this was not that free consent and contract, that ought to conclude him, and operate as a dissolution of the contract of hiring and service.

But the court thought, that the last words of the case as stated were so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued.

*Per Curiam,*

Rule absolute and both orders quashed.

Vide the next case.

### Rex v. Inhabitants of Swalcliffe.

*Saturday,*  
*Feb. 8th.*

A legal order of removal is conclusive, if unappealed from: but an order of removal to a place, which does not maintain its own poor separately, is a mere nullity.

TWO justices by an order remove *Thomas Hawkins* and *Mary*, his wife, from the parish of *Swalcliffe* in the county of *Oxford* to the parish of *Stourton* in the county of *Warwick*. The sessions on appeal adjudged the settlement to be at *Swalcliffe*, quashed the order and stated the following case:

That the pauper was born at *Swalcliffe*, the place of his father's settlement. That in *January* 1782 he was removed by an order of two justices from *Swalcliffe* to *Ascott*, a large populous village, part of the parish of *Whichford*, and maintaining its poor in common with *Whichford*; to which order *Ascott* did not appeal: and the parish of *Swalcliffe* filed the order at the *Epiphany* sessions 1782 for safe custody. The pauper and his wife coming again into the parish of *Swalcliffe* and not having acquired any subsequent settlement, the overseers of *Swalcliffe* obtained the first mentioned order and sent the pauper to *Stourton*. That at *Chipping Norton* there are two statutes yearly for hiring of servants; the first is before old *Michaelmas*, and the second is always the *Wednesday* after old *Michaelmas*. In the year 1775 at *Chipping Norton* second statutes, which in that year happened to be the day after

after old *Michaelmas* day, the pauper was hired to serve *John Rous* of *Stourton*, from that day until old *Michaelmas* day 1776 for 4*l.* 6*s.* 6*d.* wages. That on the *Friday* following the pauper entered on his service and continued therein at *Stourton*, until the day after old *Michaelmas* day 1776; when the master paid the pauper his wages, and he went away. That the pauper in the year 1776 was hired by one *Matthews* at *Shipston* first statutes, which was the *Saturday* before old *Michaelmas* day, to serve the said *Matthews* at *Ascott* from *Michaelmas* 1776 to *Michaelmas* 1777 at 4*l.* 10*s.* wages, and common for one sheep; that the pauper entered on his service, and in the course of the year the master sold the pauper sixteen sheep upon credit. That the pauper continued in the service without any difference having happened between him and his master, until *Shipston* first statutes 1777, which were held on the 4th of *October* in that year: when the pauper went thither to be hired, and returned to his service early in the morning of the next day, having been out all night. The master (who had knowledge of the pauper's courting a girl) told the pauper he would have no such goings on, as lying out all night, and that he should not be a servant of his any longer: to this the pauper answered, that he was as willing to go as his master was to send him away: the master then told him, he should make a deduction in his wages. That the pauper had his whole wages paid to him excepting one shilling, at the time he settled the account with his master, which was about a week after *Michaelmas*: and he understood the shilling was deducted for lying out all night. The sessions quashed the order of justices, on the ground that the hiring, from the day after old *Michaelmas* to *John Rous* to the old *Michaelmas* following, was not a hiring for a year; and determined, that no subsequent settlement was gained at *Ascott*.

1783.

REX  
versusInhabitants of  
SWALCLIFFESettlement at  
Stourton.

*Howorth* and *Wooddejon* shewed cause in support of the order of sessions; and they admitted, that, under the authority of [a] the *K. v. the inhabitants of Syderstone cum Bermer*, a hiring from the day after *Michaelmas* until the *Michaelmas* following was a legal hiring for a year.

They endeavoured to support the proposition, that the shilling having been unreasonably and oppressively deducted and the

[a] E. 17 G. 3. 1777. ante, p. 19, confirmed in the case of the *K. v. Inhabitants of Skiplam*, M. 27 G. 3. 1786. 1 *Durnford and Eagt.* 490.

1783. master having otherwise an obviously interested motive for his conduct, the court might under such circumstances presume fraud, tho' it was not expressly stated: that acquiescence was not consent: that it had been decided in the case of [a] *Rex v. Inhabitants de Islip* in com. Oxon. that a servant had a right to absent himself for the purpose on which the pauper here went: and, if that was not the cause of turning him away, it must have been a fraud. But this point was not pressed, as they did not appear to think the ground tenable.

REX  
versus  
Inhabitants of  
SWALCLIFFE

But they farther contended, that the order of removal to *Ascott*, being unappealed from, was conclusive as to the pauper's settlement in the parish of *Whitchford*: that, as *Ascott* was stated to be a large populous village, maintaining its own poor in common with *Whitchford*, the court would presume, that the pauper had been received by some person acting for the parish at large: that in the case of [b] the *K. v. Kirkby Stephen*, it was adjudged, that a parish was bound by a removal to a particular part of it: that in that case the several divisions of the parish maintained their respective poor separately: and that, if the law were unquestionably so where the interests of the several branches of the parish were separate, it must be so *à fortiori*, where they were the same: that both branches having here a common interest, the order was notice to the whole parish: that being received by any of the parish was the same thing, as if it had been received by the whole; and therefore, that as against *Whitchford*, as including *Ascott*, this order was a conclusive judgment.

*Bearcroft*, in support of the rule to quash the order of sessions, insisted; that, though an order of removal, unappealed from, is conclusive, when directed to a place to which a removal can legally be made, and where there is to be found some body legally authorised to appeal, as is the case in every parish as well as every hamlet that separately maintains its own poor, yet in the present instance the order was directed to a place not of either of these descriptions, and in which there existed no officers to act: that a removal must be to such a place; a place where there are officers to receive the pauper; and who may afterwards also, if necessary, appeal: that to omit to do a thing, which was impossible to be done, could not be conclusive upon any one; and that *Whitchford* could not possibly appeal in this case: for, not being parties, they were not entitled to interfere or to be heard.

[a] E. 7 G. 1. Str. 423. Caf. of Settl. 97.

[b] T. 10 G. 3. 1770. Bott. 209.

That, as to the other point, had the master said, "you shall go away, for otherwise you will be settled here;" it might be fraudulent: but that the court in stronger cases have said, the fraud must be stated: it must be clear to demonstration; they will only take notice of it, where they cannot avoid it.

1783.  
~  
Rex  
versus  
Inhabitants of  
SWALCLIFFE

Lord *Mansfield*, You labour a point that is abandoned. And as to the removal to *Ascott*, it was no reason for an appeal. It was in truth no removal at all. It was a mere nullity.

*Askeburst*, J. You may as well remove to a man's house.  
*Willes* and *Buller*, Justices, concurring,

Rule absolute,  
Order of two justices affirmed, and  
Order of sessions quashed.

---

Easter



1783.

## Easter Term

23 Geo. 3. 1783.

Wednesday,  
May 14<sup>b</sup>.

Rex v. Inhabitants of Hope Mansell.

A petty constable, sworn into office and executing it by deputy, thereby discharges a certificate and acquires a settlement.

TWO Justices by an order remove *James Davies, Ann* his wife and their five children, from the parish of *Hope Mansell* in the county of *Hereford* to the parish of *Brampton Abbots* in the same county. The sessions on appeal adjudged the settlement to be in *Hope Mansell*, quashed the order, and stated the following case:

That *Daniel Davies*, being a certificate person from the parish of *Rofs* to the parish of *Brampton Abbots* where he resided many years, during that residence had a son named *John*; which son afterwards lived in the same parish and was chosen petty constable and sworn to execute that office: that, after being so sworn, he declared he would not serve the office himself; and did accordingly employ one *James Addis* to serve it for him, to whom he gave half a guinea for his trouble. That some years afterwards *James Davis* (whose legal settlement was then in the parish of *Bridgford*) was bound apprentice by indenture to the abovenamed *John Davies* for the term of seven years in the aforesaid parish of *Brampton Abbots* and duly served the said term. That the said *James Davis*, the pauper, was removed by an order of two justices from the parish of *Hope Mansell* to the parish of *Brampton Abbots*, upon a supposition that he gained a settlement there by such apprenticeship; to which order the parish of *Brampton Abbots* appealed. This court, considering the matter, is of opinion that the aforesaid *John Davies* though chosen and sworn into the office of petty constable, but not having himself executed the same, did not gain

Settlement at  
Brampton  
Abbots.

a set-

a settlement in the said parish of *Brampton Abbots*; and consequently that the said *James Davis*, the pauper, did not gain a settlement in the same parish by means of such apprenticeship.

*Bearcroft* and *Phillipps* shewed cause in support of the order of sessions: and they stated the question to be, whether according to the true construction of the statutes 3 *W. & M.* [a] and 9 & 10 *W.* [b] the pauper's master's certificate subsisted, at the time the pauper served his apprenticeship; or had been previously avoided by his having executed the office of petty constable by deputy and under the circumstances stated in the case? And

*Bearcroft* contended, that, though the latter of these statutes, which respects certificated persons, enacts, that they may acquire a settlement by *executing* an annual office, yet the former act, which was a general one, required that the office should be executed by the party intitling himself, *for himself and on his own account*: that, these acts being in *pari materia*, the latter must be referred to the former; that in this view it was obvious that executing the office by deputy would not satisfy the express words of the legislature; and that nothing less than a *personal* discharge of its duties could give a settlement.

That such an execution of the office could not be considered as giving a title to a settlement without doing as much violence to the spirit of the poor laws in general as to the letter of this particular statute: that this as well as many other modes of acquiring settlements were merely substitutes for notice to the parish, which the law otherwise would require: that the principle therefore was notoriety to the parish: and that, unless the party served the office in person, there could not possibly be that notoriety; for that the petty constable was not chosen by the parish, but at the leet, of which the parish had no notice.

Mr. *Bearcroft* also contended, even if the court should be of opinion, that the discharge of the duties of this office by deputy was sufficient to satisfy the statute, that still it ought to appear that the whole of those duties had been discharged and throughout the whole of the period during which the officer was bound to perform them: that it had been adjudged, in the case of [c] the *K. v. the Inhabitants of Fittleworth*, that an execution of the office for the space of a whole year was necessary to give a settlement;

1783.

REX

versus

Inhabitants of  
HOPE MAN-  
SELL.

[a] c. 11. s. 6.

[b] c. 11. s. 1.

[c] M. 18 G. 2. 1744. Burr. Settl. Cas. 238. 1 Will. 81. S. C.

and

1783.  
 ~~~~~  
 REX
 versus
 Inhabitants of
 HOPE MAN-
 SELL.

and that it did not appear upon the case when and how early in the course of his year the pauper employed the deputy, or whether such deputy did or did not discharge the duties of his office.

But upon this point the court thought, that the same strictness is not to be observed in construing orders of justices as is used in convictions; and that they will not doubt of facts, of which it appears that the sessions had no doubt. [a].

Phillips contended, that the pauper's master had not avoided his certificate, the execution of the office not having been such, as the acts of king *William* require: that the very terms of the acts of parliament as well as the general principles of the poor laws demonstrate, that the execution of this office must be personal: that the words of the first act were "If any person, who shall come to inhabit in any parish": that these words were strictly personal; and that there was no pretence to say, that a man could gain a settlement under these words by any representation, by the inhabitation of his wife and family without himself: that these words are immediately followed by "shall for himself and on his own account execute:" and, being so connected with the former, seem to shew that the legislature meant to pursue the same idea of personality: and that the continuance of the party in office during a whole year, which the same clause required, farther favoured the same idea: that this, which bore the title of an explanatory act, must be taken according to the natural import of the words, and will not admit of a latitude of construction: that the case of an explanatory law was one of the last in which it would be permitted to resort to artificial reasoning and legal fictions; such as the doctrine of *qui facit per alium, facit per se*: that, as in every other instance the gaining of a settlement is personal, it ought still to be more so, when done by such means as in the present instance, by the means of avoiding a certificate; because it was the object of [b] the latter of these acts to increase the difficulty in such cases: that a settlement is considered as a reward by the parish for the benefit of the pauper's labour, a recompence for the services he has performed: that it is so adjudged

[a] Vide the next case, *Rex v. the inhabitants of St Nicholas, Gloucester*.

[b] *Dennison, J.*, in *Rex v. Fittsworth, Burr. Settl. Cal. fo. 242.*

in the case of [a] the K. v. the Inhabitants of *Christchurch*: that in direct contradiction to this maxim, by a residence in any other place and consequently without any recompence to the parish, if the doctrine of deputing were to prevail, the difficulties thrown by the legislature in the way of certificated persons, aiming at settlements, would be removed, and a door to great fraud opened.

1783.

Rex
versus
Inhabitants of
HOPE
MANSELL.

That a petty constable is not such an officer, as is by law authorized, [b] unless under particular circumstances, to appoint a deputy: that it is laid down in [c] *Hawkins*, that "a constable may appoint a deputy to execute a warrant directed to him, *when* by reason of sickness or otherwise *he cannot do it himself*:" and that the reason assigned is, that otherwise there would be a failure of justice; and he adds, "that he does not find that it is settled, that without such special cause a constable can make a deputy:" that in Sir *Walter Vane's* case it was holden by *Keeling Ch. J.* and *Windbam*, that a constable cannot make a deputy; and that the justices at sessions did wrong in allowing it; for they only make a servant, but a deputy as such must be sworn and act for himself as well as the constable; and that in this case as reported in [d] *Keble* and *Siderfin* the authority of [e] *Phelps v. Winchcombe*, which is there stated to have been cited from *Moor* and *Rolle*, was by these judges denied to be law, as to a constable's general power of making a deputy: and that it was agreed by the court as stated in *Siderfin* that, where a woman, under a custom that this office shall be served by rotation of houses, is called upon, she may appoint one to serve for her; and that he who is to serve is sworn and is the constable and not a deputy: that it seems to follow from hence, that, where it is not perfectly clear that an officer has a power to depute and where that officer is sworn, the acts of his unsworn deputy cannot by any relation be said to be his acts.

[a] E. 33 G. 2. 1760. by Wilmot J. Burr. Sett. Cas. fo. 498.

[b] The general power of making a deputy in this case as well as in that of an overseer is very fully discussed in the case of the K. v. Alice Stubbs and Others. E. 28 G. 3. 1788. Durnford and East 2. 395.

[c] 2 P. C. 62.

[d] H. 19 & 20 Car. 2. 1667. 2 Keb. 309. 1 Sid. 355. Vide also 1 Lev. 233. S. C.

[e] M. 13 Jac. Moor 845. 1 Roll. Abr. 591.

1783.
 Rex
versus
 Inhabitants of
 Hope
 MANSELL.

That it never has been before supposed that any but the person, visibly and publickly executing the office, could gain a settlement by it; and that the only question hitherto made upon the subject has been, whether such person, acting for another, could himself gain a settlement? that, the court held, he could not, as not executing it on his own account: that still less ought the principal to have this advantage without any execution at all: that *Lee Ch. J.* at the time he delivered the judgment of the court in the case cited of *R. v. Fittleworth* said, "my opinion on the act [a] is this, that the meaning of the words unless he shall execute some annual office in such parish &c." is; that, "unless he does that service, which is a performance of this requisite, which the act prescribes &c, he does not gain a settlement:" that his lordship had before said in this case, that "the reason for the settlements given under this title to certificate men was [b] for the reward of their service:" that to employ another and that probably in his own absence, could never be that execution of his office or performance of service, which was meant by the legislature to give such an officer a claim to the reward: that if every other title to a settlement was founded upon a personal performance of the requisites, that if a man could not reside for 40 days or come into a parish to settle on a settlement of 10 *l.* a year by representation, if he could not be hired for a year or bound as an apprentice by deputy, if these acts could not be done for him by another, much less ought that act; which the very terms of the statute require that he must do "for himself:" that the authority of the case cited, with respect to the necessity of a personal service to entitle the officer, had governed a subsequent case, that of [c] the *K. v. the inhabitants of Christchurch*: and that, if *Lee Ch. J.* should have thrown out any dictum to the contrary in a more early [d] period than the determination of the *K. v. Fittleworth*, the court would pay very little regard to that, when set in opposition to the solemn and deliberate determination in the latter case.

[a] 9 & 10 W. 3. c. 11. § 1.

[b] Upon this subject see the *K. v. the inhabitants of St. Giles's, Reading*, Tr. 18 G. 3. 1778, ante fo. 56. and note thereon.

[c] Tr. 27 & 28 G. 2. 1754. Burr. Sett. Ca. 365.

[d] E. 8. G. 2. 1735. *Rex v. the inhabitants of St. Maurice in Winchester*, Burr. Sett. Ca. fo. 29, 34.

He also observed, that if these acts in *pari materia* were not considered as one law, if, contrary to its preamble, the latter statute was to be taken as a new and not [a] an explanatory one, the mere entering upon an annual office, after having been legally placed in it, would entitle to a settlement: that in the *K. v. Fittleworth*, Lee Ch. J. had urged this argument with the same view; that it was the former act alone, that required an execution *throughout the year*: that merely to have been invested with the office or even to have executed it in a single instance could never be such a service to the parish, as could be meant to intitle to such a reward: that such an idea, though it was the clear construction of the act if considered separately and apart, had never yet been insisted upon; and consequently that the universal sense must have been, that the two acts together formed one system of law upon the subject.

Allen in support of the rule to quash the order of sessions insisted; that, with respect to the first point whether a constable may appoint a deputy, the distinction was, that ministerial offices may be executed by deputy, but that judicial offices cannot: that it is said in the very passage that had been cited [b] from *Hawkins*, that "the office of a constable is *wholly* ministerial, and *no way* judicial:" that this distinction is adopted by *Coke*, Ch. J. in the case of *Phelps v. Winckcombe* as reported in [c] *Bulstrode* and *Rolle*; and that it is there holden, as it is also laid down by Lord *Hale*, [d] that a constable may appoint a deputy: that all the authorities agree that for a *special cause* he may make one; and that it is by no means a necessary consequence that he cannot *generally* depute: that in the case of [e] *Peak v. Bourne* it is decided that a parish clerk may depute; and the court in delivering their judgment give the present case as another instance of a similar power: and that in the case of [f] *Medburst v. Waite* the court

1783.

REX
versus
Inhabitants of
HOPE
MANSELL.

[a] It is, in express terms, explanatory only of the St. 8 & 9 W. c. 30. without any general reference, or reference to St. 3 W. & M. c. 11. s. 6., the act in question.

[b] P. C. 62.

[c] M. 13 Jac. 1. 3 Bulstr. 77. 1 Roll. Rep. 274.

[d] H. H. P. C. 88.

[e] M. 6 G. 2. 2 Str. 942. but this case, and the opinion of Lord *Hale* as well as every other case cited, appears to have been founded altogether upon the authority of *Phelps v. Winckcombe*; the decision of which case could by no means establish the *general* power contended for; as it was the case of a deputation made by a constable, *when sick*, and for a purpose, clearly *ministerial*. It is also stated by the reporters in general to have been adjourned; and by *Bulstrode* to have been compromised, and that no judgment ever was given.

[f] M. 2 G. 3. 1761. 3 Burr. 1259.

1783.
 REX
versus
 Inhabitants of
 HOPE
 MANSELL.

held, that a high constable (though taken to be in some respects a judicial officer) might make a deputy to do ministerial [a] acts.

That, with respect to the second point, whether a constable executing his office by deputy avoids his certificate and acquires a settlement, it was [b] a maxim, that the court would lean in favour of settlements: that though there was no direct authority upon the subject, the principle had been established in many cases; that what a man does by deputy is to every intent and purpose the same thing as if he did it himself: that there could be no reason why this should be the only exception to that general rule: that the meaning of the legislature, in using the words "for himself and on his own account" in *St. 9 & 10 W. 3.* was to prevent a deputy from gaining a settlement: that it had been adjudged in the cases of [c] the inhabitants of *Lothsome v. Sheriff Hales*, and [d] the *K. v. the inhabitants of Winterbourn*, that a deputy constable, executing the office, does not thereby acquire a settlement: that, if the duties of that office are performed, the performance of which was intended to give a settlement in the parish thereby benefited, this right must fall somewhere; and, that it seemed to follow of course, that if it did not upon the deputy, it must upon the principal: that otherwise, though a service was done and a recompence intended, no recompence could be had; and the maxim that settlements are to be favoured would be totally and strangely reversed.

That it has been said, that notoriety is the principle [e] upon which the several modes of acquiring settlements, subsequent to [f]

[a] But the power claimed here is to depute *generally* and for *all* acts. In such a case there is an instance in which the legislature have interfered: for by *St. 1 W. & M. c. 18. s. 7.* it is provided, "that if any person dissenting from the church of England shall be chosen or otherwise appointed to bear the office of high constable or petit constable, &c. and such person shall scruple to take upon him any of the said offices in regard of the oaths, &c. every such person shall and *may* execute such office or employment by a sufficient deputy, &c."

[b] Tho' this has been generally so received, it does not any where appear to have been so established upon any clear and satisfactory principle; neither has it at all times and universally been adopted. It seems, that the maxim ought only to obtain in particular cases, and that the sounder and better reasoning is that of Lord Ch. J. Raymond, *M. 1 G. 2. 1727. Bott. fo. 291.* "I do not see why the statutes are to be construed in the favour of settlements, when such construction may do a prejudice to other people, and no service to the pauper, who certainly is no vagrant, but has a settlement somewhere."

[c] *MSS. Caf. Hil. 6 Ann. Vin. Abr. 19, 379.*

[d] *H. 4 G. 3. 1764. Burr. Settl. Caf. 520. See also 1 Bl. Rep. 452.*

[e] In the case of a certificate man, the certificate does not amount to a notice in writing. Lord Hardwicke in the *K. v. St. Maurice in Winchester. Burr. Settl. Caf. fo. 29. E. 8 G. 2. 1735.*

[f] *c. 17. s. 3.*

ft. 1. *Ja.* 2. are founded, and consequently that personal service is here an indispensable requisite; but, if this were so, if the settlement depended altogether upon that degree of notoriety which must arise from the execution of the office, it could never have been decided, that a settlement could not be gained by a deputy: that the ft. 9 & 10 *W.* 3. does not require a personal service: that the words are merely "*execute* some annual office:" that it is a new law, and, as such, to receive its construction from itself, and not to be interpreted by reference to the peculiar wording of any other act; and that it is not explanatory of ft. 3 & 4 *W.* 3.: that it was expressly so adjudged in a case [a] between the parishes of *Burclear* and *Eastwoodbay*; and in the *K. v. St. Maurice* in *Winchester*, as stated in *Bott. fo.* 346.: that in the same case, as stated in *Burr. Lee J.* adds, that the unanimous judgment of the court in the *K. v. Burclear* was well founded; "for the act *enlarges* the certificate man's "power of gaining a settlement, for now if he executes such an "office *by deputy* he gains a settlement, whereas by 3 & 4 *W.* & "M. he was to execute it for himself and on his own account:" that no sound reason could be opposed to this construction; for, altho' the office was executed by the deputy, it was the principal that was responsible to the parish; and, that it was in conformity to one of the first general principles upon which the doctrine of settlements was built, that, as the parish derived a benefit by being eased throughout this year of the burthen of this office, the person by whose means they were so relieved was intitled to his recompence; and that the law had said, the equivalent was his settlement.

That, tho' notoriety might be the true principle, there was not, as had been contended, any want of legal notoriety in this case; for that, in contemplation of law, the parish must be taken to be present at the leet, where they owed their attendance; and consequently that the principal must have been placed in his office with the privacy of the parish.

Willes, J. Two statutes are made the subject of doubt here; the stat. 3 & 4 *W.* & *M.* and 9 & 10 *W.* 3. This last is the act more immediately applicable to the present question. One point I lay out of the case, whether a constable may make a deputy? Most of his acts are ministerial, and as to ministerial acts he certainly may.

1783.

Rex

versus

Inhabitants of

HOPE

MANSELL.

[a] E. 5 G. 1. 1 Str. 163.

1783.

Rex
 versus
 Inhabitants of
 Hore
 Mansell.

This is so settled in *Medhurst v. Waite*: and the cases cited of [a] the K. v. inhabitants of *Alcannings* and Sir *Walter Vane's* cases were considerable authorities in support of the general power. The words also of the st. 3 & 4 W. & M. seem to imply that this office may be executed by deputy. The act, by restricting the right there given to those who execute the office "for themselves," rather supposes, that, unless this restriction had been interposed, they would have intitled themselves, if they had acted "for others." But that will not intirely govern this question; as there is behind a considerable [b] doubt, how far this statute can be connected with st. 9 & 10 W. 3., by which the settlement in the present instance is given. Had it not been for the authority of *Lee Ch. J.* in the case of the K. v. *Fittleworth*, I should have thought that the latter statute had been a new, and not an explanatory, law. [b].

To

[a] H. 9 G. 3. 1769. Burr. Settl. Cal. 634.

[b] The authorities are not only far from being uniform with respect to the reference of the latter of these statutes, the Certificate Act, to the former under which a settlement is gained by serving an office; but there has also been much difference of opinion, whether the Certificate Act ought to be construed with relation to the st. 13 & 14 Car. 2.; under which the power is given of removing persons, coming to settle in a tenement under the yearly value of ten pounds. But, tho' there are to be found some dicta of a late date, that seem to shew that this question is still unsettled, yet in the case of the K. v. the inhabitants of *Duns Tew*. Tr. 29 & 30 G. 2. 1756. this point received a solemn determination agreeable to the intimation of opinion by Mr. Justice Willes in the present case; and that the Certificate Act was not there to be construed with reference to the 13 & 14th of Car. 2., but as a new, and not an explanatory law. And this decision was subsequent to that of the K. v. *Fittleworth*, which was in M. 17 & 18 G. 2. 1744. Vide the case of *Rex v. the inhabitants of Fillongley*. M. 27 G. 3. 1786. Appendix, p.

It seems proper in this place to give a view of the clauses of the three statutes, upon which these questions arose.

By st. 3 W. & M. c. 11. s. 6. "If any person, who shall come to inhabit in, &c. shall, for himself and on his own account, execute any public annual office or charge in &c. during one whole year, or shall &c., then he shall be adjudged and deemed to have a legal settlement &c., tho' no such notice in writing be delivered and published, as is hereby before required."

By st. 9 & 10 W. c. 11. s. 1. "No person &c. who shall come into any parish by any such certificate as aforesaid shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the YEARLY* value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office."

By st. 13 & 14 Car. 2. c. 12. s. 1. "Upon complaint made by the churchwardens &c. to any justice &c. within forty days, after any such person or persons [i. e. poor people who are rambling from one parish to another] coming so to settle as aforesaid in any tenement under the yearly value of ten pounds, any two justices may remove, &c."

* It is very singular, that this word should be omitted by almost all the approved Editors of the statutes, as by Cay, Pickering, Ruffhead and Runnington & by Mr. Bott in his extracts of statutes prefixed to his decisions upon the poor laws, p. 36. Edit. 1773; altho' the marginal abridgment in every one of these works states, that it must be the taking of "a lease of

To be sure there can be no doubt, but that the holding and legal serving of an office was substituted in lieu of 40 days notice: but the pauper is here sufficiently announced to the parish in his character of constable by being chosen at the leet and sworn into his office. An office, conferred so publicly and in a place where it was also the duty of the parish to attend, could not fail of being a matter of notoriety. It is this notoriety and the credit derived from being in so public a station, that form the principal grounds upon which the officer's settlement is founded: and therefore I do not agree with what was said by *Lee Ch. J.* after he had given the judgment of the court in the *K. v. Fittleworth*; that the settlement was meant as a recompence for the performance of that service for the space of a year, which is the requisite the act prescribes. At least the *personal* service is not in my opinion an indispensable requisite. I think on the contrary, that this act ought to receive a liberal construction: and so it is adjudged in the *K. v. Burclear* [a].

The question then comes to this, whether this man, having been appointed and sworn in and having paid another person for discharging the duties of the office, shall be considered as having *executed* the office within the meaning of the statute? Now it is clear, that, if the principal does not gain a settlement, the deputy cannot: but, tho' the deputy does not, you must resort to a very different kind of reasoning to shew that the principal cannot. I find nothing which compels me to say, that it is necessary, that this man should have served the office in person. On the contrary the general maxim of the law is, *qui facit per alium, facit per se*; and the burthen of the execution has certainly lain upon this man.

As to the authorities, had the case of the *K. v. Fittleworth* been directly in point, we should have holden ourselves bound by it: but there the officer was removed in the middle of the year, and

1783.

REX
versus
Inhabitants of
HOPE
MANSELL.

of a tenement of the value of ten pounds *per annum*;" and altho' in *Cay, Ruffhead* and *Runnington* this act is stated to have been examined with the record. The general understanding amongst lawyers and the uniform practice of near a century has certainly been in contradiction to this reading and in conformity to the sense suggested in the margin; and this word is retained in the edition of the continuator of *Keble*, *Mr. serjeant Hawkins*, *Bill and the executrix of Newcomb*, *King's printers*, and the assigns of *Richard and Edward Atkins*, esquires, in 1706, and also in the black letter copy, printed at the time (1697) from the original record in the hands of the clerk of parliament by *Bill and the executrix of Thomas Newcomb*, *King's printers*.

[a] Vide *Probyn and Lee J.* in the case of *Rex v. inhabitants of St. Maurice in Winchester*. E. 8 G. 2. 1727. *Burr. Settl. Cas. fo. 29, 34.*

consequently

1783. consequently there was no execution of the office for a year either by deputy or in person. I therefore think this an execution of the office within the act.

REX
versus
Inhabitants of
HOPE
MANSELL.

Buller, J. As to the objection in point of form, besides the general answer that has been given, if the deputy appears to have been paid, I should presume the whole work was done.

With respect to the merits, the authorities cited strongly favour the general power [a] of deputing. In the *K. v. Allcannings* [b] the court asks "Who is benefited by the service of the deputy?" "Why the principal." And the reason given is, "because it discharges the principal from serving the office again." After such service he certainly cannot be called upon again, until it is his turn. And the parish as well as the party is benefited by the service; as otherwise the burthen must have fallen upon some one of their number. The office having then in fact been supplied and that by the means of the principal, with the knowledge and to the advantage of the parish, the service of the deputy is the service of the principal; and, if the contrary were holden now, neither the one nor the other would gain a settlement: for it is clear that the deputy does not. The whole reasoning therefore of the cases, that establish this, goes strongly with the argument, that the principal may.

Rule absolute.

Order of Sessions quashed.

Lord Mansfield and Lord Commissioner
Askeburst were absent.

[a] It seems to have been assumed as a settled point, both upon the bench and at the bar, in the *K. v. Clarke*. E. 27 G. 3. 1787. Durnford and East, fo. 682, 89., generally that a constable may depute.

[b] Bott. 340.

Saturday,
May 17th.

Rex v. Inhabitants of St. Nicholas, Gloucester.

Profits of
a weighing
machine
house are
rateable to
the poor.

TWO Justices allow a rate made for the relief of the poor of the parish of St. Nicholas in the county of the city of Gloucester, by which the mayor and burgesses of that city are assessed for their machine house in the said parish.

Upon the appeal of the mayor and burgesses, alledging that the profits of the machine, (which were estimated at about 40% a year

a year and constituted the greatest part of the charge, the house being only of the annual value of 5*l.*) were not a legal object of taxation, the sessions order, that "the said rate be amended; and "that the said machine *house* be rated at and after the rate of 5*l.* "and no more; because they are of opinion, that the profits arising from the said machine ought not to be rated towards the "maintenance of the poor of the said parish:" and they stated the following case:

That the mayor and burgesses of the city of *Gloucester*, about five years ago, were possessed of and entitled to a house in the parish of *St. Nicholas* in the city of *Gloucester*; and, being so possessed and entitled as aforesaid, they erected a machine in a street leading by the said house, for the purpose of weighing waggons, carts, &c. with coal and other things; and have since demanded and received of and from the owner of every such waggon, cart, &c. so weighed as aforesaid, the sum of two-pence in the ton for every ton, the things, contained in the said waggon, cart, &c. so weighed as aforesaid, amounted to. That the steel-yard, part of the said machine by which the said waggons, carts, &c. were weighed as aforesaid, was and always has been *in the said house* of the said mayor and burgesses in the parish of *St. Nicholas* aforesaid; and that the said house is called *the machine house*. That the said mayor and burgesses have no right to compel the owners of waggons, carts, &c. loaded with goods as aforesaid, to bring their said waggons and carts, &c. to be weighed at and by the said machine. That the said house, called *The Machine House*, independent of the profits arising from the said machine, is worth about 5*l.* That the profits arising from the said machine are about 40*l.* *per annum*. And that the said machine house stands rated to and upon the rate of the parish of *St. Nicholas* in the following manner, *viz.* the mayor and burgesses of *Gloucester* for a machine house, 24*l.* 1*l.* 16*s.* 0*d.*

Bearcroft shewed cause in support of the order of sessions, which, by amending this rate, had exempted the weighing machine from taxation. He stated, that the form of the rate was, "*The machine house*;" and that the rate itself charges nothing else and does not describe the machine as being part of the *house*: and insisted, that, the sessions having an undoubted right to decide all facts, and having stated it as clear that the house itself is only worth five pounds *per annum*, the single question was, whether the ma-

M m

chine

1783.

Rex

versus

Inhabitants of

St. Nicholas

Gloucester.

TER.

1783.
 ~~~~~  
 Rex  
 versus  
 Inhabitants of  
 St Nicholas  
 Gloucester.

chine was part of the house? and consequently that the court, before they proceeded to quash the order of sessions, must see clearly that on the facts stated they have formed a wrong judgment: that it does not appear upon this case, that the machine is *part* of the house: that this is by no means a necessary consequence of its being *in* it: that it is not even stated to be fixed to the freehold: that, even if it were let into the ground of the street before the house and so were part of the freehold, it was still no part of the house: but that to make out the case on the other side, they must connect it with the house: that it cannot be said to be appurtenant to it; for it only hangs over the way.

*Buller, J.* If the street, so built upon, is no part of the appurtenances, by what right do the corporation erect the machine there?

*Bearcroft.* They are owners of the soil.

*Buller, J.* If so, they have allotted some of this soil, as forming a necessary part of one whole, to this useful and lucrative purpose.

*Mr. Bearcroft* then contended, that, as the rate here was made expressly upon the house and the house only, it could not be necessary to argue, whether the profits of the machine were, as personal property, proper objects of taxation: that, if it were, the court had, uniformly in questions of this sort been governed by the usage of the place; that with respect to this particular machine, its recent introduction excluded the possibility of usage: that the case did not state any instance of any similar machine having ever been rated in any other place; and that it would be extremely dangerous and even ruinous to trade to encourage any such attempt; as upon the same principle the profits of [*a*] weaving machines and of every other mechanical invention, by means of which the preference given to our manufactures was principally insured, must necessarily be subjected to taxation.

*Lee*, Solicitor general, and *Clifford*, in support of the rule to quash the order of sessions, insisted; that, if property of any character or denomination is, by any collateral circumstance or appendage, made more valuable than such property in general is, there can be no reason that it should not be charged to every pub-

---

[*a*] The case of the *K. v. Hogg*, E. 27 G. 3. 1787. is so directly applicable to the present, that I have thought fit to insert it in the body of this work. See the next case.

lie burthen to the extent of its clear profit; whether that profit arises from a payment, voluntary or compulsory: that the clear profits of lead mines, received without risque by the lessor, had in the case of [a] *Rowls v. Gell et al'* been holden liable: that the profits in the present case came within the same rule: that the point, which had been made respecting the general rateability of *personal* property, could have no place here, as in the city of *Gloucester* by a local statute that property was rateable: that no other question, than whether a property, circumstanced as the present, was exempted from the general rateability of property, had been made below, or was meant to be submitted to the judgment of this court: that, from despair upon the merits, recourse was now had to an objection, that at most went to a restating of the case; but that there was no pretence for it: that the steel yard was stated to be in the house, and therefore that the engine and the house were substantially the same thing, or at any rate the component parts of one and the same thing: that they were applied to one and the same purpose, and the one absolutely necessary to the other in point of description, use and profit.

They also contended, that this produce or profit was liable to be rated as toll: but the court held clearly, that it was not; for that the case stated, that it was optional in the owners of carriages, whether they would weigh or not: and that, though they passed over the soil, there was no obligation upon them to use the machine: but that toll was a compulsory payment.

Lord *Mansfield*. It is not in terms said, that the machine is annexed to the freehold; but the nature of the thing supplies the defect in the expression. Indeed the expression sufficiently shews it. What is the house? It is, "The Machine House." They are one intire thing, and are together rated by the common known name, which comprehends both: and the principal purpose of the house is for weighing. The steel yard is the most valuable part of the house: The house therefore, applied to this use, may be said to be built for the steel-yard, and not the steel-yard for the house. And the quantum of the assessment must be allowed to be most moderate; as, although a liberal allowance ought to be made for wear and tear, labour and attendance, the charge does not much exceed the half of the value.

*Willes, J.* There does not seem to have been any doubt below but that the machine was, as it is described in the rate, appurte-

1783.  
 REX  
 versus  
 Inhabitants of  
 St NICHOLAS  
 GLOUCESTER.

[a] E. 16 G. 3. 1776. Cowp. 451.

1783.  
 ~~~~~  
 REX
 ~~~~~  
 versus  
 Inhabitants of  
 St Nicholas  
 Gloucester.

nant to the building. If so, its clear profits are undoubtedly rateable. If a billiard table stands in a house, and the house should, in respect of such table, let at a higher sum, it is rateable, while the table continues there and it is so let, at the advanced rent.

*Buller, J.* The conclusion of this case is strong to shew, that the justices considered [a] the machine as part of the house; for the question they raise, the point they bring forward and refer to the court is, whether the profits are rateable? And, so long as they are received, they undoubtedly are. It is like the case of [b] the *Cheltenham Spa*. There is an extraordinary profit arising from this modification of the enjoyment. The only question therefore is, whether a man shall be rated for the property he has? If a house to day is let for 30*l. per annum*, and to-morrow if turned into a shop, would let for 50*l.*, when it is turned into a shop, it shall be rated at 50*l.* Its being called the Machine House shews, that the house and machine are an entire thing. The machine is also the principal thing.

Lord Commissioner *Ashurst* was absent.

Rule absolute,  
 Order of sessions quashed,  
 and order of justices, allowing  
 the rate, affirmed.

---

[a] See the last case, *Rex v. Inhabitants of Hope Mansell*. p. 252.  
 [b] *Tr. 17 G. 3. 1777. Cowp. 619.*

### Rex v. Hogg.

[Easter Term 27 Geo. 3. 1787.]

A house with  
 a carding en-  
 gine in it, de-  
 scribed in the  
 rate as an en-  
 gine house and  
 both let and  
 occupied to-  
 gether, tho' it does not appear whether the engine is fixed to the building, is considered as an  
 subject, and to the extent of their annual value are properly so rateable to the poor. Local  
 do not controul or affect the construction of acts of parliament.

“ TWO Justices allow a rate made for the relief of the pc  
 “ of the township of *Ribchester* in the county of *Lancashire*  
 “ The sessions holden at *Midsummer* 1786, in the town of *Pri-*  
 “ *ton*, upon the appeal of *John Hogg* confirm the rate, and i  
 “ the following case :

“ *John Hogg* was rated to the relief of the poor for a building,  
 “ called the Engine-house; which consists of a bay of building  
 “ about 18 feet long and 19 wide, in which there is a carding  
 “ machine for manufacturing cotton. The engine is *not fixed to*  
 “ *the premises, but capable of being moved at pleasure.* The build-  
 “ ing, independent of the machine, is worth only two guineas *per*  
 “ *annum*; for which the appellant is willing to be rated. The  
 “ building and machine together are rated at 36 l. *The usage of*  
 “ *the town of Ribchester has been not to rate personal property.* The  
 “ respondents insist, that this carding machine is rateable; and  
 “ the sessions, being of that opinion, confirm the rate.

“ This case came before the court of *King's Bench* in *Hilary*  
 “ term 1787, when the court directed it to be restated, and an-  
 “ swers to be returned by the court of quarter sessions to the fol-  
 “ lowing queries :

“ Whether the engine mentioned in the said order is worked  
 “ with water or with horses; and whether the house wherein the  
 “ said engine stands is a dwelling-house, or built for the purpose  
 “ of receiving the engine; and whether it is used for any other  
 “ purpose than working the engine; and in what manner the en-  
 “ gine is put up in the engine house; and what is its size and  
 “ bulk: and also whether the owner of the building has con-  
 “ tracted to discharge the occupier of all taxes?

“ At the ensuing *Easter* the court of quarter sessions made the  
 “ following return :

“ The counsel on both sides do consent to the following facts in  
 “ answer to the order of the court of *King's Bench*; viz. that the  
 “ engine therein mentioned is *generally worked with water*, but  
 “ frequently by the hand. That the building, wherein the said  
 “ engine stands, is *not a dwelling house*, nor was it erected for the  
 “ purpose of receiving the engine; but formerly was used for the  
 “ purposes of turning bobbins, and as a weaver's shop: but is now  
 “ used for the purpose of carrying on the cotton manufactory,  
 “ there being in the same building two other engines, besides the  
 “ engine before mentioned, worked as aforesaid; one of which is  
 “ also used for the purpose of carding, and the other for tum-  
 “ ming cotton, which tumming is another process of the same  
 “ manufactory. All the engines are *placed on the floor, and no ways*  
 “ *annexed or fastened to the same; but may be moved at pleasure* and  
 “ carried out and worked in any other place, either by means of

1787.

~  
 Rex  
*versus*  
 Hogg.



1787.

~  
 REX  
*versus*  
 HOGG.

Saturday  
 May 12.

“ water or manual labour, and are not adapted to any particular building. The frame in which the engine stands is twelve feet in length, three feet eleven inches in breadth, and two feet nine inches in height: the semidiameter of the largest cylinder with a small roller at the top rising twenty inches above the frame; the engine sinking in the frame seventeen inches. *Leonard Walmsley* is the lessee of *the premises* under the owners, and is subject by his lease to discharge *the premises* of all taxes; and *Hogg*, the appellant, is his subtenant, but *Walmsley* pays the taxes.

“ And now *Caldecott* shewed cause in support of the order of sessions, confirming the rate; and insisted, that, though the case now returned was by no means a full and satisfactory answer to the questions proposed and the most material point of inquiry was contrived to be eluded, yet enough was stated to enable the court under a direct authority to adjudge this a species of property, rateable to the poor: that it was such

“ 1. As being a house, consisting of the building and engine, and together forming one undivided subject, of the same description, use and character.

“ 2. As the engine itself, independent of the building, was a visible, local, personal property, producing a certain annual profit, without adventure of any kind.

“ 1. That this property was rated by the name of the *Engine House*: that the case stated, that the engine was *in the house*: that it was of such a bulk and extent, as to occupy two thirds of the house in length: that it was not a dwelling house; and that the only uses to which it had ever been applied were of a nature similar to the present, and merely as a case for machinery of this sort; as a weaver's shop: and that the shell was worth only 2 *l.* a year, and the engine 34 *l.*

“ That as they were both thus substantially the same, the finding did not any where negative their being literally so: that it only said, that the engine was no ways annexed or fastened to *the floor*: that it might therefore in many different modes be annexed to other parts of the building: that as it was found to be “ generally worked with water” the wheel must in some sort have been fastened to the wall: and that, if worked with water, it was in the nature of a mill; and that mills have, as one thing with the building that contained them, been adjudged rateable.

That

“ That in the contract between the parties the original lessee is  
 “ stated to be the lessee of *the premises*, and subject by his lease  
 “ to discharge *the premises* from taxes: that the premises must  
 “ mean the engine house altogether, as described in the rate: an  
 “ intirety; and not the machine separate from its case, or the case  
 “ from the machine.

1787.

~  
 REX  
*versus*  
 HOSE.

“ That agreeable to the sense of the owners of this property and  
 “ upon this general principle was the reasoning of the whole court  
 “ in the case of [a] the weighing engine: that also it did not appear  
 “ any where in that case, that the engine was *part* of the house,  
 “ but only that it was *in* it: that this omission was then insisted  
 “ upon in argument; but that the court adjudged that property  
 “ to be rateable; Lord *Mansfield* saying, “ that the nature of the  
 “ thing supplied the defect of the expression:” that this case was  
 “ therefore in point.

“ That with respect to the arguments *ab inconvenienti* and the  
 “ consequences of such a decision, there was not a pretence to con-  
 “ sider this as a tax upon labour, or that it could in any new and  
 “ improper way affect the mechanic or manufacturer: that the  
 “ labouring poor hire these engines of the wealthy; and, if as oc-  
 “ cupiers they pay this charge, they hire the engine at an easier  
 “ rate: but the labouring hand is then left in the same situation  
 “ with that of every other labourer: that in all cases they find their  
 “ own tools; and where a mechanical discovery enables one hand  
 “ to do the work of numbers, if, whatever he pays, an equal pro-  
 “ fit remains to the workman, the price of labour is where it was.  
 “ But that the case in direct terms excludes any such reasoning here;  
 “ as it expressly finds that the occupier, the manufacturer, does  
 “ not pay the rates, but that they are paid by his immediate  
 “ lessor.

“ That it is said by *Buller, J.* in the case of [b] *Atkins & al., v.*  
 “ *Davis & al.*, that “ carrying water from the pump in carts, if a  
 “ profit is made, would subject the carrier to be rated to the ex-  
 “ tent of those profits:” that this might be said to be a tax upon  
 “ labour; but that, if a man were to build carts, and let them out  
 “ to others to carry, and by such dealings make a large profit, the  
 “ charging of such a proprietor could not in any view be consider-

---

[a] See the last case.

[b] Tr. 23 G. 3. 1783. post.

1787.

REX  
versus  
HOGG.

“ ed as the taxing of labour : that such was precisely the present  
“ case : it was as the tax upon the cart and not the carrier, upon  
“ the profits of a mechanical instrument and not the earnings of the  
“ mechanic. Farther, that nothing could be more evident, and  
“ intuitively clear, than that these engines from their nature must  
“ unavoidably introduce a numerous poor into the parishes, in  
“ which they are worked ; and that it would be a monstrous ab-  
“ surdity as well as grievance, if the proprietors of lucrative me-  
“ chanical instruments, by means of which parishes become bur-  
“ thened to a very heavy amount with poor, should not contribute  
“ one farthing to the support of those poor, out of the clear profits  
“ of this property.

“ But that, in another view, if the house “ was not erected  
“ to receive the engine,” if it had not the smallest relation to it,  
“ the house was indisputably a tenement, was indisputably a subject  
“ rateable ; and if so, the court without quashing the rate, would  
“ refer it to the sessions to adjust the proportion of its value : that  
“ the taxable *premises*, which the case states, that the original  
“ lessee is to discharge of all burthens, must at least mean the house,  
“ if it mean any thing : but that in its true sense it extended to the  
“ whole subject of contest.

“ That, upon the second point, it was now much too late to  
“ contend *generally*, that personal property was not rateable to the  
“ poor : that, where any species of it has been conceived to be in-  
“ titled to exemption, some *special* ground has of late been always  
“ insisted upon : that in the case of [a] the *London* water works, the  
“ question was stated both upon the bench as well as at the bar to  
“ be, whether projects of very hazardous adventure, requiring in  
“ the first instance a vast capital and continually in every subse-  
“ quent stage subject to very heavy expence and losses, were con-  
“ trary to all usage, fit objects of taxation ? that having recourse to  
“ such special ground of exemption seemed to demonstrate, that,  
“ in the opinion of those who so argued, the *general* proposition  
“ was not tenable ; and that in the case now before the court  
“ there is nothing like risque, or previous capital required, or po-  
“ ssible loss or heavy expence : and that, under such circumstanc

---

[a] *Atkins v. Davis.*

“ the profits of the lot and cope of lead mines, though uncertain and though the principal itself, the lead mine, was not rateable, were holden rateable in the case of [a] *Rowlls v. Gell & al.*

1787.

REX  
versus  
HOGG.

“ That with respect to the fact stated, “ that the usage of the town of *Ribchester* had been not to rate personal property”, such fact could make no difference upon principle; though the introduction of it might supply some argument from the want of any express authority [b] in such case: that, if this property had been liable under a custom, it must be liable generally; for there is no other legal ground, upon which a custom can subject it: that local usages may be matter of accommodation and contract, and in the districts in which they are found may prevail by force of such contracts; but can have no binding power against the provisions of the legislature: that in the case of [c] the *K. v. Saltren* esquire (which was a question whether tithe was that species of property, which would subject the holder of it to have a parish apprentice appointed him, though the case stated that no apprentice had ever before been bound there in respect of tithe) *Ashburst* and *Buller* Justices, both expressly held, that that circumstance could make no difference: and that in the case of the *K. v. Harman Probyn J.* declares the law in the same manner: “ usages that can vary the construction of an act of parliament, must be universal, and not only the usage of a particular parish.”

“ That, as to the general usage with respect to this species of property, it could make no difference, whether any instance of its being rated had ever before occurred; for that, till the case of the weighing engine, that property had never been any where charged, and yet the court had no difficulty upon that ground.

“ *Bearcroft*, *Cockell* Serjeant, and *Topping*, in support of the rule to quash the order of sessions, confirming this rate, contended; that the case of the *K. and St. Nicholas* in *Gloucester*

[a] E. 16 G. 3. 1776. Cowp. 451.

[b] Vide fo. 156. ante.

[c] E. 24 G. 3. 1784. post.

[d] E. 12 G. 2. 1739. Bott. 8.

1787.

~  
 REX  
 v. HOGG.

“ was materially distinguishable from the present : that it differed  
 “ in a particular of all others the most considerable in the decision  
 “ of this case ; that is, that the machine was there expressly stated  
 “ to have been “ erected in the street :” that it was consequently  
 “ fixed to the freehold ; and that it was admitted, that the cor-  
 “ poration, who were assessed for it, erected it there as owners of  
 “ the soil : that this case of course fell within the very words of  
 “ the stat. 43 *Eliz.* ; which the court had frequently and very  
 “ wisely declared, they would not extend by construction and  
 “ carry any farther beyond the letter : that the engine in the pre-  
 “ sent case was on the contrary found “ to be no ways annexed or  
 “ fastened :” that it was “ placed on the floor” like a chair : that  
 “ the wax-work in *Fleet-street* might be as well called a tene-  
 “ ment, or considered as appurtenant to the freehold ; and that  
 “ any principle, upon which it could be rated, would apply  
 “ equally to any article of household furniture : that the *inference*  
 “ of the engine’s being necessarily attached to the freehold, because  
 “ the case stated that it was generally worked with water, could  
 “ not be admitted ; as each of the cases returned by the court  
 “ below had *positively* negatived this fact, by finding that it “ was  
 “ not fixed, that it might be moved with pleasure and carried out  
 “ and worked in any other place :” and that the finding here also  
 “ excluded another argument that had weight in the decision of  
 “ the *K. v. St. Nicholas in Gloucester*, i.e. “ that the house might be  
 “ said to have been built for the steelyard and not the steelyard  
 “ for the house ;” as it expressly states “ that these engines were not  
 “ adapted to any particular building.” That in truth this could  
 “ not in legal contemplation any more than in common sense be  
 “ taken as an intirety, as one single, inseparable subject ; inasmuch  
 “ as upon the death of the owner, they must pass into different  
 “ hands ; the house, if freehold, would descend to the heir, and the  
 “ engine would go [a] to the executor.

“ That no mechanical engine had ever yet, under any circum-  
 “ stances, been rated : that policy and the interests of trade forbade  
 “ it : that to subject them now would be of very serious public  
 “ consequence, would be ruinous to the staple of the country :

---

[a] To this point see the case of the Salt-pans. *Lawton, administrator, v. Salmon esq;*  
 E. 22 G. 3. 1782.

“ that

“ that the argument on the other side necessarily went to sub-  
 “ ject the stocking frame and all the machinery of the woollen  
 “ manufactory to taxation: that these had never been attempted  
 “ to be rated, though they had existed ever since and long before  
 “ the existence of the statute: that it would therefore be too  
 “ much even to argue that this was a property clearly and *undoubt-*  
 “ *edly* rateable; and that it seemed to be agreed by all the court  
 “ in the case of *Atkins & al. v. Davis & al.* that in *doubtful* cases  
 “ usage ought to have great weight; and that it would explain,  
 “ though it ought not to controul an act of parliament.

“ That it must be, that the manufacturer would in some degree  
 “ be a sufferer, if these engines were adjudged rateable: that if  
 “ the original owner had formed his calculation in building them  
 “ or the mesne holder in taking them for a term of years, at a  
 “ time when there existed no idea that such an article was liable  
 “ to be taxed, they would take care not to submit in future to the  
 “ loss of the whole amount of the tax, but would not fail to throw  
 “ at least his proportion of the burthen upon the labouring hand;  
 “ and that it would thus operate as a tax upon labour and the  
 “ manufacturer.

“ With respect to the second point they insisted; that though  
 “ they might contend, that there exists no adjudication, in which  
 “ any particular species of personal property has been holden lia-  
 “ ble, independant of usage (which is expressly negatived in the  
 “ present case) it was sufficient here to say, that this is no rated  
 “ as personal property, but as realty. The rate is upon “ a build-  
 “ ing:” and therefore that under the denomination of realty and  
 “ in that character only could this property be shewn to be liable,  
 “ and the rate supported.

*Albhurst J.*

“ It seems to me that this case is still left imperfect; for it is  
 “ not stated negatively that this engine, while it is in a state  
 “ of working, is not in some way or other fixed to the house.  
 “ It is only stated, that it is not fixed to the *floor*: but it may be  
 “ fixed to the walls of the building without being fixed to the  
 “ floor. We can assume no facts on either side: but one should  
 “ suppose, that it must be fastened in some way; otherwise, as it  
 “ is worked by water, the weight of the water must displace it:  
 “ and if so, it is exactly the case of the *K. v. St. Nicholas in Glou-*  
 “ *cester*. But it is enough that part of the subject is rateable;

N n 2

1787.

~  
 REX  
*versus*  
 HOGG.

“ and

r787.

R. & C.  
versus  
Hogg.

“ and the rate is on the *house*. Then the quantum of it is not for  
 “ our consideration ; and this court will not interfere with the  
 “ province of the Justices, or enter into a general question, collateral  
 “ only to the point before them and not necessary to the determination  
 “ of it. Besides, the whole is leased as one intire thing ; for the  
 “ lessor contracts to pay the taxes for *the premises* ; which term  
 “ comprehends every thing demised, the *engine* as well as the  
 “ house : and this finding of the case lays quite out of the ques-  
 “ tion all argument that has been used to shew, that an adjudica-  
 “ tion, subjecting this kind of property to taxation, might operate  
 “ as a tax upon labour ; an idea that this court would not give  
 “ countenance to.

“ *Buller J.* I have always thought that it would have been bet-  
 “ ter to have given a direct opinion at once upon the general con-  
 “ struction of the stat. 43 *Eliz. c. 2.* than, by making single in-  
 “ dependent adjudications and avoiding the general question, to  
 “ have encouraged the stating of particular cases, and suffered such  
 “ a waste of expence in inquiring, whether the circumstances of  
 “ those cases formed exceptions to a general rule, supposed and  
 “ assumed, but which had never been positively and unequivocally  
 “ pronounced. In the case of *Atkins v. Davis*, I stated the prin-  
 “ ciple to be, that every man was to pay according to his ability.  
 “ This seems agreeable to natural justice ; and if right, the court  
 “ in particular cases have only to look whether any ground of ex-  
 “ emption is stated, any reasonable exception to this general  
 “ principle. In that case I agreed with the court, that we could  
 “ not impose a new tax upon the subject by construction. We  
 “ are not to make, but explain, the law. But I then thought,  
 “ and I still think, that as a general question, personal property  
 “ is rateable ; and that it is necessary to shew the particular case  
 “ to be an exception. In some cases it may be inexpedient to rate  
 “ personal property, in many it may be attended with difficulty ;  
 “ but if the party aiming at it can effect it, we must pronounce  
 “ the law : and I think that by law it is rateable.

“ As to the objection founded upon the different qualities and  
 “ and character of the component parts of this property, and that  
 “ one would descend to the heir and the other go to the executor,  
 “ it is perfectly immaterial here. If the engine were clearly dis-  
 “ tinct, it would in all cases go to the executor ; but, if the sub-  
 “ ject is rateable, no matter to whom it would pass. Here how-

“ ever they are both in the hands of a lessee ; and, being so holden  
 “ together, would go both to the executor.

“ It is said, that this is a rate upon manufacturers, and so it is ;  
 “ but it is not a rate upon labour. Such cannot be maintained.  
 “ The recompence for the labour of the hand or the head is not,  
 “ *eo nomine*, or in the moment in which it is made, a subject rate-  
 “ able : but when profits have accumulated and are invested, we  
 “ cannot go into the enquiry, whether they were the profits of a  
 “ trade or a profession, or how they were acquired ; but the ques-  
 “ tion whether they are rateable or not must depend upon the  
 “ form that has been given them, the thing that visibly exists.  
 “ Whether converted into land or however otherwise disposed of,  
 “ if they are visible and yield an annual profit, they are a subject  
 “ rateable. The produce of labour, vested in property that is  
 “ rateable, is then of course rateable.

“ There can be no objection to the *quantum* of the rate, if the  
 “ subject rated be an intirety. The house and engine are, as  
 “ such, let together ; are called in the case and rate *the Engine*  
 “ *House* ; and the house acquires a greater value from the use it is  
 “ put to. I therefore consider them as one and the same thing ;  
 “ and am of opinion that the rate is good.

“ *Grose J.* We have nothing to do with the *quantum* or propor-  
 “ tion : our proper enquiry is, whether this is a species of pro-  
 “ perty that is rateable ? It is an engine house fitted up with an  
 “ engine, but whether that is fixed or not is uncertain : both are  
 “ let together, and the rate is on the building. The engine is  
 “ evidently a part of the house ; for *Walmesley* is stated to be lessee  
 “ of *the premisses*, which comprehend the whole, both house and  
 “ engine. I therefore consider this as an intire thing. The ar-  
 “ gument, that the property here is of different kinds, and that  
 “ one passes to the executor and the other descends to the heir,  
 “ would if founded, go only to the *quantum* of the rate. No  
 “ doubt, but that unfurnished and without fixtures or hangings, a  
 “ house is worth less than when commodiously fitted up ; but, if  
 “ let, it must be taxed at the value of the whole it contains. If upon  
 “ that point a question is raised, if the value is controverted, the first  
 “ application must be to the sessions ; but no deduction can possibly  
 “ be made on account of the peculiar nature and descendibility  
 “ of the particular articles. A tenement of little or no value, fitted  
 “ up as a malt house and let together with a malt mill, though such  
 “ malt

1787.

REX  
 vers.  
 HOGG.



1787.

~  
 REX  
*versus*  
 HOGG.

“ malt mill is removeable at pleasure, is not only rateable as real  
 “ property under the denomination of a malt house; but also to  
 “ the full extent of the annual amount of the profits, which such  
 “ a mill might have added to the building.

“ It has been contended, that this rate cannot be support-  
 “ ed; because the case states, that in this town “ the usage has  
 “ been not to rate personal property.” This is a general and im-  
 “ portant question, upon which I wish to be understood. The  
 “ universal law of the land cannot bear one interpretation in one  
 “ town and another in another. It is impossible. Private treaties,  
 “ originating in the convenience of the parties and not found to  
 “ obstruct the execution and defeat the beneficial purposes of the  
 “ law, will by all courts of justice be holden obligatory upon  
 “ those individuals at least who personally contract; but these are  
 “ mere matters of compact and accommodation: for if any one,  
 “ that has an interest in the subject and has not concluded himself,  
 “ shall raise the question, we must decide by the general law.  
 “ Where the words of an act of parliament are clear, usage can  
 “ never be attended to: but in doubtful cases and where they are  
 “ ambiguous, general and contemporary usage may be material  
 “ to shew the sense in which the public have received a pub-  
 “ lic law.

“ Upon the whole I am of opinion, that this case is not to be  
 “ distinguished from that of *St. Nicholas in Gloucester*.

Lord Mansfield was absent.

Rule discharged, and the  
 Order of sessions, confirming  
 the former order of justices, affirmed.

2 Ch. 476  
 1787  
 2 Ch 22

Saturday  
 May 17.

### Rex v. Inhabitants of Mitcham.

With respect  
 to the public,  
 the land tax  
 act is to be  
 considered as  
 a tenant's  
 tax; whate-

TWO Justices by an order remove *John Heard, Elizabeth*  
 his wife and their five children, from the parish of *Mit-*  
*cham* in the county of *Surrey* to the parish of *Moredon* in the  
 same county. The sessions on appeal adjudged the settlement to  
 be at *Mitcham*, quashed the order and stated the following case:  
 ver may be the view of it, as between landlord and tenant; consequently where both are named and  
 neither expressly rated, but the tenant pays, the tenant acquires a settlement. Under this construction  
 of the statute, where the title of a rate is upon *inhabitants*, this word seems to import *occupiers*.

That

That *John Heard*, the pauper, inhabited for several years a house at *Moredon*, which he rented of *Mr. Gaffon* who was also an inhabitant of the parish of *Moredon*, at the clear yearly rent of five pounds, clear of all taxes, parliamentary and parochial. That, whilst he so held and occupied the same, an assessment was made on the said parish of *Moredon* for the land tax; the title of which was as follows, "*Surrey, &c.* an assessment on the inhabitants of the parish of *Moredon*, for raising a sum by a land tax for the service of the year 177," and made in manner and form following, as far as it respected the said *John Heard*, prout patet:

1787.  
~  
REX  
versus  
inhabitants  
of  
MITCHAM.

| Rent.    | Landlord's Name. | Tenant's Name. |                     |
|----------|------------------|----------------|---------------------|
| £. 5 0 0 | Mr. Gaffon.      | John Heard.    | £. s. d.<br>0 9 9 ½ |

that the said *John Heard* paid the said 9 s. 9 d. ½. to the collector who demanded the same. Settlement at Moredon.

*Mingay* shewed cause in support of the order of sessions; and insisted, that this rate in its form neither imported a rating or a paying (both of which of which are necessary to give a settlement) by the pauper in his own right: that, tho' it was true that the payment had been made by the hands of the pauper, the tenant, yet it was in legal contemplation a payment by the landlord: that the court must take it to have been on account of him, upon whom the law had thrown the burthen: that, tho' the tenant must evidently be liable to have the tax levied upon him, it was nevertheless a tax imposed upon the landlord: that it must consequently have been received in this character by the officer; for the collector did not appear to have been privy to any agreement to the contrary, nor could any such private agreement affect the parish: that the case of [a] the *K. v. the inhabitants of Carshalton* went upon the principle [b] that must govern the present: that

[a] E. 15 G. 3. 1775. Burr. Sett. Caf. 809. recognized in the case of the *K. v. the inhabitants of St. John, Southwark*, Tr. 19 Geo. 3. 1779 ante p. 62.

[b] In that case Lord Mansfield said, I think the case turns on the ground, that it is a landlord's tax. The parish are not helped by it, as they would have been had it been an occupier's tax.

1787. the only difference between them was, that there the form of the assessments was, "landlords *rated*," here it is "landlords *names*:" that the name of the landlord, unless for the express purpose of charging him and he is stated to be an inhabitant, need not have been inserted; but that by the provisions of the land tax act the tenant is obliged [a] to answer this charge on behalf of his landlord.

Rex  
versus  
Inhabitants  
of  
MITGHAM.

The court here inquired in what manner, to whom and in whose name the receipts were given: [b] but this did not appear.

*Mingay.* That according to the general form in use, it is on this account that the tenant is included in the rate, that the collector may know the occupier of the premises charged, [c] the person to whom he is generally obliged to resort for payment. That at most it can only be said on the other side, that the rate is doubtful upon the face of it; but that in answer to this, the fact that was left doubtful upon the rate is expressly found in the case, and decided upon by the court below; who have said that the landlord is rated: and the law also says, that he is in the first instance liable, and that this is not a tenant's tax. That in the case of [d] the *K. v. the inhabitants of Painswick* (where it was left open, [e] whether it was the landlord or tenant that was rated) it was highly reasonable that, in a case as that was upon the poor rate, the circumstance of such rate being a *tenant's* tax should [f] turn the scale: and that by the same rule here, in a case upon the land tax, where it was left equally open upon whom

[a] St. 17 G. 3. c. 3. s. 17.

[b] Tho' the names of both landlord and tenant appeared upon the assessment, the circumstance of a receipt given by the collector to the tenant, stating that the sum paid was *assessed upon the landlord*, was holden in the case of the *K. v. the inhabitants of St. James in Bury St. Edmunds*, M. 25 G. 3. 1784. post. p. to decide, that this was a rate upon the landlord, and consequently that the tenant did not acquire a settlement.

[c] The words of this act are, "which said collectors are hereby required to demand all &c. of the parties themselves, as the same shall become due, if they can be found, or else at the place of their last abode, *or upon the premises charged* with the assessment, s. 9.

[d] Tr. 31 G. 2. 1758. Burr. Sett. Cas. 465.

[e] The form of the rate was, "Thomas Clifford *or* tenant."

[f] But this circumstance is not touched either at the bar or by the Bench upon the argument in this case.

the

the assessment was made, the circumstance of that tax being a landlord's tax ought equally to form the rule of decision.

*Palmer*, in support of the rule to quash this order, insisted; that the pauper had acquired a settlement, having been charged with and having paid his share towards a publick tax: that the case of the *K. v. Carshalton* was essentially different from the present: that there it was shewn by the column of the rate who was rated: but that it does not here in the same way appear who is rated: that there the title of the rate was "on the *landholders* and inhabitants;" here upon the *inhabitants* only: that the tenant is the only person who with respect to the land must be the inhabitant; and therefore, coupling the title of the rate with the rate itself, that it was equivalent to an express rate upon the tenant: that tho' it is true that the landlord is in this case stated to be an inhabitant, that circumstance as to the present question must have been merely accidental; as it cannot be supposed that the property in a parish is generally inhabited or occupied by the landlord; and that the decision in the above case was made with great and declared regret. That tho' it was commonly said that the tax was a landlord's tax, yet properly speaking, and upon principle, it was not so: that the rate is a designation of the person who is the material object of the authority of the assessors, the person who is to be called upon for payment: that the intention of the legislature is to subject the visible holder of the land: that this, merely because in the event it comes out of his pocket, cannot be considered as a tax upon the landlord alone: for upon him the poors rate and all other rates ultimately fall; as the tenant will give no more for land than after all deductions it is worth: that from a consideration of the several clauses of the land tax act the tenant will clearly appear to have been the proper and immediate object of the legislature: that in *§. 4.* of the annual land tax act, (all which acts are copied from the first of the present reign,) the charge is to be made "upon all persons having *or holding* any such messuages, lands, &c."

[a] now the tenant is the person *having or holding*; and these are the

1783.

REX  
versus  
Inhabitants  
of  
MITCHAM.

---

[a] But in the first land tax act, which passed June 2. 1689. 1 W. & M. c. 20. § 4. after the words "having or holding," were added, "in his, her, or their actual possession." Ruffhead's appendix to the statutes, vol. 10. p. 201. Thence I conceive, that from the period of the omission of these words (whensoever that first happened, and whatsoever might have been the original and previous intention of the legislature) it could not have been the intention that the tenant should *alone* be responsible for the payment. And that the general

1783.  
 REX  
*versus*  
 Inhabitants  
 of  
 MITCHAM.

the very terms in which his interest is in every lease conveyed to a lessee: where there are mesne lords, it is the tenant that must be their representative; for there may be twenty, and then which of them shall be rated? And tho' it is true that by *f.* 5. the person intitled to a rent charge, &c. is liable to his proportion, yet that this is by way of contribution, but never nominally; that he is neither rated or called upon: that the tax always comes from the hand of the tenant, how many soever or to what degree soever there may be others interested. That upon this view of the subject the point seemed to be clear; but that, if it were only doubtful who is rated here, or more correctly upon whom the charge is made, it must be taken to be upon the tenant; for they are the tenant's goods that are liable and his person [*a*] in default of goods; and, as to the power given him of deducting out of his rent the sum he should be compelled to advance, that circumstance was not introduced into the act with any view to the public. That *f.* 18. having required the tenant "to deduct out of his rent so much as his landlord should and ought to pay and bear," the landlord ought not in this case to pay or bear any part; for the case finds that there is an agreement to the contrary: that, if he is to deduct *so much* as the landlord is to bear, the tenant cannot be considered by the legislature as paying *altogether* vicariously: that the *quantum* of charge, that as against the tenant the owner of the land must bear, will depend upon the contract between them; and that *f.* 19. the next section which impowers the commissioners to settle differences upon this subject between landlord and tenant, is a complete answer to the objection; that the collector has nothing to do with any private agreement and that such could not affect the parish: for, tho' the collector may have nothing to do with it, the commissioners have: that in *f.* 64., [*b*] which refers to the double tax imposed by a former clause (*f.* 60.) upon Roman Catholics, by

---

ral understanding of mankind to the contrary had some better foundation than vague and common opinion appears from the case of the *K. v. the occupiers of St Luke's Hospital*; in which Lord Mansfield says: "the *land* tax differs from the *poors* tax. The *landlord*, who receives the rent, is to pay the *land* tax; but the *poors* tax is payable by the *occupiers*." *M.* 1 G. 3. 1760. 2 Burr. fo. 1063.

[*a*] *S.* 18.

[*b*] Vide the case of the *K. v. the inhabitants of St. Lawrence, Winchester*, *M.* 25 G. 3. 1784. post. fo.

express words the landlord only is subjected to the charge and payment, and the tenant is expressly discharged; consequently that it must have been considered by the legislature that, without such words of charge as well as those of discharge of the tenant, the tenant in all other cases was at least equally liable to both. That the reason, why the landlord's name is now always inserted in the rate, is to afford evidence of his right to vote for knights of the shire: that by stat. 20 G. 3. c. 17. no person shall so vote for any lands, which have not been assessed to the land tax in his name: that by this act these assessments are directed to be made in the very form now used: and that previous to this act it could only have been accidentally that the landlord's name could have been introduced, and not with any view to the assessment or the collection of the tax. [a] That it has been holden in many cases, that a tenant may be considered as rated, though his name is not actually in the rate: that it was so in the case cited of the *K. v. Painswick*; and it has even been holden that his occupation need not be referred to upon the face of the rate: that this was so adjudged in the case of [b] the *K. v. the Inhabitants of Walsall*; where "late Lowbridge's house" was the only entry: and in the case of [c] the *K. v. the Inhabitants of Heckmondwick*; where nothing appeared upon the rate but the name of widow Preston, who had been a former occupier. That therefore, (either by inference from the resolution of the court in the case of the *K. v. Carshalton*, or from the reasoning upon the act itself for the purpose of shewing that, both in general as well as under the agreement with his landlord, the tenant was the proper object of the land-tax act) the pauper, the tenant, was here so rated, as to intitle him to his settlement in *Moredon*.

*Bond G.* on the same side was stopped by the court.

1783.  
 Rex  
 versus  
 Inhabitants  
 of  
 MITCHAM.

[a] Vide the case of the *K. v. the Inhabitants of St. James in Bury St. Edmunds* M. 24 G. 3. 1783. post. fo.

[b] M. 18 G. 3. 1777. ante p. 35. which case appears to me not to be distinguishable from the present; for there *Aston J.* with the concurrence of the court says, "the question is singly, whether the parish have taken notice of a man as an inhabitant? And, when they take his money, they must know him. 'The officer's receiving the rate of the tenant fixes it, explains what was doubtful upon the entry and shews notice.'" p. 38. And upon this principle the judgment of the court appears to have gone in the case of the *K. v. the Inhabitants of Endon, Longsdon and Stanley*. Tr. 23 G. 3. 1783. post p.

[c] H. 21 G. 3. 1781. ante p. 103.

1783.

REX  
versus  
Inhabitants  
of  
MITCHAM.

Lord Mansfield.

The question is whether the landlord or tenant is the person charged? The assessment does not say who is, but the names of both landlord and tenant are used. The rate alone then is in this case no charge upon either. The answer to this question must therefore be gathered from other circumstances. In the first place, who ought to be charged? undoubtedly the occupier ought. The land it is true is the debtor; but the rate is pointed at the occupier. The parish cannot tell who is the landlord or who has a rent charge. It is upon the occupier that the officer of government takes his remedy; and, though the landlord is directed to allow the sum levied out of the rent, the parish have nothing to do with transactions between landlord and tenant. This is a matter between them; but, for the sake of the public, the occupier, the ostensible person, is to be considered as the person first liable. The next consideration is, what does the assessment profess to be? It professes to be an assessment on the *inhabitants*; that is the occupiers: the landlord may or may not be an inhabitant, the tenant must be. Then of whom is it demanded? of the occupier. Who pays it? the occupier. We may therefore supply from the circumstances that which is omitted in the rate itself; and intend here, that which was expressed in the case of the *K. v. Carshalton*; with which the present decision does not interfere.

*Willes J.* There are two circumstances that differ this case from that of the *K. v. Carshalton*; viz. the title of the rate and the manner of making it: and the court were there of opinion that the landlord was charged upon the face of it. Here where the expression falls short, and we cannot from the instrument itself collect enough to found our judgment upon, collateral circumstances point out the tenant as the person meant to be charged.

*Buller J.* In the case of the *K. v. Carshalton* the court went wholly upon the word "rated," which followed the word "landlord" in the same column. The great doubt here has arisen from the common phrase, that the land-tax is a landlord's tax: and as between landlord and tenant it certainly is so; but not so as to the parish and the public. As to this point, Mr. *Palmer's* arguments upon the several clauses of the act of parliament are unanswerable. And if the point were otherwise doubtful, I think the title of the rate which is on the "inhabitants" would decide.

Under

Under this statute it is the visible owner that is the person to be looked to. It is therefore here equivalent to saying—"tenant rated".

Rule absolute,  
Order of sessions quashed,  
and order of two justices, affirmed.

Lord Commissioner *Ashburst* was absent.

1783.

REX  
versus  
Inhabitants  
of  
MITCHAM.

Rex v. Justices of Huntingdonshire.

Wednesday  
May 21.

UPON a removal of a pauper by an order of two Justices, the notice of appeal to the quarter sessions was served upon a *Sunday*: had the appellants deferred the service of their notice till another day, they would not have been in time to have given, under the practice established in that court, reasonable [a] notice

The sessions are bound to receive an appeal to an order of removal, although no notice has been given.

[a] The two statutes that relate to this subject are 13 & 14 Car. 2. & 9 G. The first enacts, that "all such persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county at their next quarter sessions, who are hereby required to do them justice according to the merits of their cause." c. 12. s. 2: The other, that "no appeal from any order of removal, &c. shall be proceeded upon, unless reasonable notice be given by the churchwardens or overseers of the poor of such parish or place, who shall make such appeal, unto the churchwardens or overseers of the poor of such parish or place, from which such poor person or persons shall be removed; the reasonableness of which notice shall be determined by the justices of the peace at the quarter sessions, to which the appeal is made; and if it shall appear to them that reasonable time of notice, was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same." c. 7. s. 8.

A *Mandamus* has frequently been directed to the sessions to receive and enter appeals at the next sessions after the removal, although no notice of appeal has been given. It was so done without opposition upon the motion of Mr. *Kenyon* in the case of the *K. v. the Justices of Worcestershire*, E. 16 G. 3. 1776: and this point has generally been considered as so perfectly clear, that no opposition has been attempted. But in the case of the *K. v. the Justices of Gloucestershire*, E. 19 G. 3. 1779. Dougl. 182. this application was opposed by Mr. *Dunning*: and on that occasion Lord Mansfield said, "the notice directed to be given by st. 9 G. does not go to the receiving, but the hearing, of the appeal." Previous indeed to this statute a return to a *Mandamus* by the sessions, that an appeal was dismissed for want of that notice which was by their practice on all occasions required (though it was objected, that they should have adjourned it) appears to have been allowed: but the court there considered it merely as a point of practice; of which they say the sessions, in the same manner as all other courts, are the most proper judges Tr. 6 G. anonymous. 1 Str. 315. But now, this statute requires that if reasonable notice, i.e. notice under their practice, cannot be given, then they shall adjourn, and at the next sessions finally hear and determine. Yet with so much rigour has the old rule, ever since the st. of 9 G. been adhered to at the quarter sessions, that even an impossibility or at most a bare possibility of complying with it has



1783.

~  
 REX  
*versus*  
 Justices of  
 HUNTING-  
 DONSHIRE.

to the respondents for the purpose of *trying the merits* of the appeal.

The court of quarter sessions (being of opinion that the party aggrieved was not at any rate or for any purpose intitled to appeal, unless the prescribed notice had previously been given to the respondents; and also that, a service of a notice upon a *Sunday* not being a legal service [*a*] there had not in point of law been any notice) refused to hear, adjourn or enter the appeal.

*Mingay*, who had obtained a rule to shew cause why a *Mandamus* should not issue, directing the Justices to receive and hear the appeal, no cause being shewn, now made the

Rule absolute.

---

has not with them been admitted as an excuse; and that very lately, E. 19 G. 3. 1783. The *K. v. Justices of the East Riding of Yorkshire*. Dougl. 183. But under the circumstances of that case the court of King's Bench were of opinion, that it was hardly *possible* that the appeal could have been then entered in time; because by the rules of all courts it is necessary, that such entry shall be made either before they sit, or at a certain hour of the day on which they sit: and accordingly a *mandamus* in that case went.

Though it may not be very easy to account upon what principle it was that the Justices, after the st. of 9 G. still adhered to their former rule, it was yet, in cases where after a removal there had been time to give notice and that notice was not given, very generally the practice at the quarter sessions not to receive an appeal; unless the delay was accounted for and the cause verified by affidavit. As under this statute the appeal must at all events afterwards be heard, to require a notice or an affidavit was to throw an expence very unnecessarily and uselessly upon the appellant: and, as the appellant is the party with whom the pauper remains, and upon whom principally the expence of his maintenance falls, it is in his own wrong that the delay is created; for though the quantum of the allowance for maintenance, provided it does not exceed the expenditure, is arbitrary in the sessions, it is rare that that allowance is very liberal or in proportion to the expenditure.

[*a*] Vide st. 29 Car. 2. c. 7. s. 6. which enacts, that no writ, *process*, warrant, order, &c. shall be served or executed upon the Lord's day; but that the service of such, &c. shall be void to all intents and purposes whatsoever.

Saturday,  
 May 24.

### R. v. Inhabitants of Tottington Lower End.

Nine or ten  
 years residence of a  
 child by the  
 direction of  
 his father in  
 a friend's  
 house for the

**T**WO Justices by an order remove *Edward Holt, Sarab*, his wife and their four children, from the township of *Broughton* in the county of *Lancaster* to the township of *Tottington Lower End* in the same county. The sessions on appeal confirm the order, and state the following case:

purpose of his support, is not, if he occasionally visits his father's house as his home, such an absence, as will upon the principle of abandonment, be considered an emancipation, and thereby prevent his following his father's settlement. The age of nurture has no relation to the doctrine of emancipation.

That

That the pauper, *Edward Holt*, is the son of *Thomas Holt*; who at the time of the pauper's birth was settled in the township of *Tottington Lower End*. When the pauper was seven years old his mother died; and he and his father went to live with the pauper's uncle, *Edward Holt*, in the township of *Pilkington* in the same county: the father boarded; but the uncle out of charity to his brother, the pauper's father, who had four other young children and in order to keep him off the town, *took the pauper* and provided for him meat, drink, lodging and cloaths: in about eighteen months the father went to reside in *Ratcliffe*, a township adjoining to *Pilkington*; but the pauper continued with his uncle till he was ten years old: about which time the pauper and his uncle's wife (the uncle being from home) having a quarrel in which she beat him, *he went to his father's house* and staid there about a fortnight; but the father not having a loom to accommodate him as a weaver, *desired him to return* to his uncle: he accordingly did return, and the uncle taught him to weave in the day, and sent him to school in the evenings: the uncle provided him with meat and cloaths, and received the money he earned: the pauper staid with the uncle on these terms until he was sixteen years of age; but, from his first going to his uncle to that time, he now and then went to see his father at a holiday time or so; and one *Christmas* he staid all night, and did so on other nights. When the pauper was fourteen years old, his father came into the township of *Pilkington* and gained a new settlement there by renting a tenement of 15*l.* a year: the pauper considered his father's house as his proper home, because he was his father; and that he could have gone to him when he pleased, and his father would have received him. The father thought himself obliged to provide for the pauper, whenever the uncle turned him away: and, when the pauper was sixteen years of age, having been struck by his uncle, *he told him he would leave him and return home to his father*: the uncle said he might; upon which *he went* to his father, and told him the circumstances. The father said, he was like to take him in, and *did receive him as part of his family*; the father was then beginning to get his hay; the pauper lived with him as one of the family, and assisted him in making hay until it was got in, which was about a week; and expected to have lived with him endway: but, when the hay was got in, the father told the pauper he had no looms to accommodate him as a weaver, and *desired him to return* to his uncle, and see if he would

1783.

REX

versus

Inhabitants of  
TOTTING-  
TON LOWER  
END.

1783.  
 REX  
*versus*  
 Inhabitantsof  
 TOTTING-  
 TON LOWER  
 END.

Settlement  
 at Broughton.

would take him in. The pauper returned, and agreed with his uncle to work for himself, and pay for his board. And it does not appear to the court of quarter sessions, that the pauper ever returned to his father. Some time after the pauper's last return to his uncle, the pauper having taken 2*s.* 6*d.* or a greater sum of his uncle, the pauper's father gave the pauper's uncle 2*s.* 6*d.* as amends for the same: the pauper has done no act whatever to gain a settlement in his own right: the father says, if the uncle had gone to live at a great distance from him, he would not have suffered the pauper to have gone with him.

*Fearnley* shewed cause in support of these orders; and contended, that on these facts the pauper could not be considered as part of his father's family at the time the father lived on the farm at *Pilkington*: that he was completely separated from that family: that, not having in nine years been absent more than three weeks from his uncle's house, it must be taken that he was domesticated there: that he also went it was true occasionally to his father's for a short space of time, as he might have done to a friend; but that such visits afforded no sort of evidence where was his home: and that he was able to maintain himself, and did so. That upon the principle laid down in all the authorities upon the subject of derivative settlements, he must be considered as emancipated: that the presumption of law that all persons were constructively part of their parents family continued no longer than their age of nurture: that this is the only principle known to the law upon the subject; and that to this Lord *Raymond* points in the case of [a] the parishes of *Eastwoodbey* in com' *Hants* and *Westwoodbey* in com' *Berks*: that emancipation does not at all depend upon matrimony, becoming an adult or a housekeeper; but whether after their seventh year the child is a *bona fide* member of his parents family? that the only proper and legal enquiry in such cases is into the nature, character and circumstances of the child's absence: that in the case cited, as well as that of [b] the parishes of *St. Michael Cossany* in *Norwich* and *St. Matthews* in *Ipswich*, though the fact of marriage was expressly stated in each of them, that circumstance does not appear to have been touched or noticed at the bar, or upon the bench: that it was the length of time only that was insisted upon,

[a] Tr. 7 G. 1. Str. 438.

[b] E. 2 G. 2. 2 Str. 830.

and

and that that circumstance had undergone much discussion. That in a late case, that of [a] the *K. v. the Inhabitants of Halifax*, the pauper led a rambling and vagabond life and had never had a fixed place of residence, or a home any where but in his father's house, where he kept his cloaths; and that here on the contrary the pauper had a fixed residence for years under the roof of his uncle, who as the case states, *took him*: and he was considered as much one of that family as any one that belonged to it. That in the case of [b] the *K. v. the Inhabitants of Walpole St. Peter's*, the pauper was a minor and had never acquired any settlement; and yet the court held that he was emancipated.

*Cockell*, in support of the rule to quash these orders, insisted; that there existed no such imaginary rule respecting emancipation, as had been attempted to be supported on the other side: that nothing was more clearly established, than that upon marriage a man ceases to be part of his father's family: that the law was so laid down in the case cited of the *K. v. Halifax*; which recognized the case of [c] the *K. v. the Inhabitants of Bugden*, in which it had been so adjudged: that the case cited of the *K. v. Walpole St. Peter's* turned [d] upon the pauper's having enlisted himself for a soldier, and that that also was the case of a married man. That it was decisive in the present case, that the father had always received the pauper expressly upon the footing of obligation; and that he had done no more than accept for the time (and whether that was long or short was perfectly immaterial) the good offices of a near relation, who had better ability than himself, in affording the boy that protection, which he was himself naturally and legally bound to find.

Lord Mansfield.

The pauper considered himself as part of his father's family, and the father considered him in the same light. When a man acquires a settlement, he acquires it for himself and his family. There is no reason to say this boy was not part of his father's family. The uncle was under no obligation to do any thing for him, or to keep him an hour; and the boy in point of fact on every disagreement went to his father's house as his home; and he received him, as he was bound to do. I see no ground for considering this an emancipation.

*Willes and Buller*, Justices, concurring,  
Lord Commissioner *Ashurst* was absent.

Rule absolute and  
both orders quashed.

[a] E. 15 G. 3. 1775. Burr. Settl. Caf. 806.

[b] E. 9 G. 3. 1769. Burr. Settl. Caf. 638. 1 Blackst. Rep. 669.

[c] H. 21 G. 2. 1747. Burr. Settl. Caf. 270.

[d] See a note upon this case in the *K. v. the Inhabitants of Stretton*. H. 25 G. 3. 1785. post. p.

1783.

REX

versus

Inhabitants of  
TOTTING-  
TON LOWER  
END.

Wednesday  
May 28.

## Rex v. Inhabitants of Iveston.

If there is an inhabitancy under a hiring for a year of forty days at any intervals throughout the year in any number of parishes, wherever the last day's inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and, if throughout the year the whole will there amount to forty, in that place the settlement attaches.

**T**WO Justices by an order remove *James English* and *Margaret*, his wife, from the township of *Newburn* in the parish of *Newburn* in the county of *Northumberland* to the township of *Iveston* in the parish of *Lanchester* in the county of *Durham*. The sessions on appeal confirm the order and state the following case:

Settlement  
at *Kyo*.

That *James English* at *Martinmas 1752* being then an unmarried person, not having child or children, was hired by Messrs. *William Newton* and *Samuel Newton* as a collier, to serve them for one year from thenceforth: that *Kyo* and *Iveston* are two separate townships in the parish of *Lanchester*, and maintain their own respective poor. That he entered into the service accordingly, and served out the whole year: that he resided at *Kyo* when he was so hired, and continued there till the *May* day following, and then he married: that about fourteen days after his marriage he took a cottage in the said township of *Iveston*, which is not far distant from *Kyo*: and without the privity of his master removed thither from *Kyo* with his wife, where they continued above forty days, and until about fourteen days preceding the expiration of his service; and then they returned to *Kyo*.

*Lee*, Solicitor General, shewed cause in support of these orders; and contended, that a settlement by service is acquired in that place, in which the servant inhabits the last forty days of the year in such a capacity in which it is legally competent to him to acquire a settlement: that it is fully settled [a] that, provided the pauper is single (and thence capable) at the time of making the contract of service, marriage during any part of that annual service will not take away his capacity: that a man may acquire as many settlements as there are forty days in the year; but that the law and the sense is, that they must follow each other in an unbroken series, without interruption or interval.

*Buller J.* But during the forty days (in what manner soever they ought to be reckoned) in which the pauper inhabited at *Iveston*

[a] Vide the case of the *K v. the inhabitants of St. Giles's Reading*. Tr. 18 G. 3. 1778. ante p. 54.

without

without the consent of his master, was he or was he not [a] removeable?

1783.

*Lee.* A hired servant is not removeable during his service: and it will often happen that the service cannot, as here, be performed where the master resides; and the justices have no power to dissolve a contract.

REX  
versus  
Inhabitants of  
IVESTON.

*Willes J.* But in the case of a servant working in a coal-pit, which is the present case, such servant may be in the service of his master: here it does not appear that the pauper was at the time in his service; [b] and the case expressly finds that the residence in *Iveston* was without even the privity of his master.

*Wilson J.* in support of the rule to quash these orders, insisted; that, as a settlement cannot be acquired by service till the year is fully completed, the pauper, when he quitted *Iveston*, could not have acquired a settlement: that it was yet, it was then, uncertain whether he ever would; and that the construction of the act of parliament was, that if there is an inhabitancy of forty days at any intervals throughout the year in any number of parishes, wherever the last days inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and if throughout the year the whole will there amount to forty, in that place the settlement attaches. That this was so settled in the case of [c] the *K. v. the Inhabitants of Lowes*; and that the principle of that decision had been confirmed in the case of [d] the *K. v. the Inhabitants of Hulland*. That that case differs from the present only in

[a] Even if a servant becomes chargeable, this point seems to have been left as a matter of some doubt by *Lee Ch. J.* in giving his judgment in the case of the *K. v. the inhabitants of Fittleworth*, M. 18 G. 2. 1744. His words are, as reported by Sir *James Burrow*: "It was said, that even servants [this was the case of a certificated man holding an office] were removable during their service; but no case has been cited to prove that servants are so: and I should very much doubt it." Settl. Caf. fo. 240. As given by Mr. *Bott*, his words are, "and if a servant should become chargeable to a parish, I think he might be removed," fo. 342. S. C. But it should seem that if a servant, during his term, though at a time when he is not performing any actual service for his master and without his privity, inhabits a parish and by such an inhabitancy would acquire a settlement (and this appears to have been so adjudged in the case of the *K. v. the Inhabitants of Hedfor*. Tr. 18 G. 3. 1778. ante p. 51. and recognized in the case of the *K. v. the Inhabitants of Nympsfield*. H. 21 G. 3. 1781. ante p. 107.) I should conceive he must a fortiori be irremovable.

[b] In the *K. v. Hedfor* this view of the subject was indeed raised, but touched very slightly at the bar; neither did the court enter into any particulars in giving their judgment: And, without adverting to the authority, the principle seems here to have induced the court to entertain a different sentiment.

[c] E. 16 G. 3. 1776. Burr. Settl. Caf. 825.

[d] E. 21 G. 3. 1781. ante p. 118.

1783. this circumstance, that there were not there forty days successive service in either parish; and this the law says there need not be: that as it could not be controverted, that, till the year was completed, a settlement by service could not possibly be perfected; it was absurd, and as contrary to reason as to the authorities, to say, that while the pauper was for the fourteen days preceding the expiration of the term inhabiting in *Kyo*, he was acquiring a settlement in another place. To be sure his marriage after the commencement of his contract could be no bar to his acquiring a settlement any where.

~  
 REX  
*versus*  
 Inhabitants of  
 IVESTON.

*Willes J.*

Independent of authorities, the rule, as it is recognized in the *K. v. Hulland*, seems to me to be agreeable to the construction of the act of parliament; for the service is not consummate till the last day: the servant shall therefore be settled in the place where he served, when it was so completed. This case is similar in principle to that of *Hulland*; and precisely that of *Lowes*. We have laid down the rule and nothing is offered to impeach it; and we are all of opinion, that it ought to be adhered to [a.]

Lord Mansfield and Buller, J. concurring,  
 Lord Commissioner Ashburst was absent.

Rule absolute, and both  
 Orders quashed.

[a] And this point seems to have been considered as fully settled in the case of

### Rex v. Inhabitants of Great Bookham.

Tr. 26 G. 3. 1786.

“ TWO Justices remove *James Longburst*, Nancy, his wife  
 “ and their son from the parish of *Great Bookham* in the  
 “ county of *Surrey* to the parish of *Fetcham* in the same county.  
 “ The sessions on appeal adjudged the settlement to be at *Great*  
 “ *Bookham*, quashed the order and stated the following case:  
 “ That the pauper, *James Longburst*, was born in the parish of  
 “ *West Clandon* in the county of *Surrey*. That at *Michaelmas* 1784  
 “ he was hired a yearly servant to *Martin Richmond* of the parish  
 “ of *Fetcham*, farmer, at the yearly wages of 7*l.*: that he served the  
 “ year out: that he was single when hired; but married the  
 “ *January* afterwards: that he resided forty days in the parish of  
 “ *Fetcham* during his service and before his marriage: but after  
 “ his marriage he took a house in *Great Bookham*, and slept con-  
 “ stantly

“stantly with his wife in the parish of *Great Bookham* during the  
“remainder of his service, excepting the last night of his service;  
“on which last night he slept at his master’s in the parish of  
“*Fetcham*.

1783.

Rex

versus

Inhabitants of

GREAT

BOOKHAM.

Settlement at

*Fetcham*.

Wednesday,

June 28.

“*Arthur Palmer*.

“*George Bond*.

“And now upon the motion of Mr. *Palmer*, no cause being  
“shewn,

“Rule absolute, and

“Order of sessions, discharging

“the order of two justices, quashed.”

Thursday,

June 22.

In the case of an apprentice the same rule had also been observ-  
ed. *Vide* the *K. v. the Inhabitants of Sandford*. Tr. 26 G. 3.  
1786. 1 Durnford and East. 281.

Ledwith v. Catchpole.

Monday,

May 19.

**T**HIS was an action of trespass and false imprisonment tried  
before Lord *Mansfield* at *Guildhall*. The defendant, who  
was one of the marshalsmen of the Lord Mayor of *London*, pleaded  
the general issue, upon which issue was joined. The jury found  
a verdict for the plaintiff with 20*l.* damages.

Where a fe-  
lony has ac-  
tually been  
committed, a  
constable or  
even a private  
person, acting  
bona fide and  
in pursuit of  
the offender  
upon such  
information  
as amounts  
to a reason-  
able and pro-  
bable ground  
of suspicion,  
may justify  
an arrest.

And now upon motion for a new trial, Lord *Mansfield* reported  
the evidence to have been: That one *Smith*, who had lost some  
linens to a large amount, brought one *Stevens* to the defendant:  
that *Stevens* said, that one *Madox* had called a coach and put *Smith*’s  
bale of goods into it at a public house: that the plaintiff put his  
head into the coach: that afterwards the coach stopped at another  
house; and that the plaintiff met it there: that the defendant,  
suspecting the plaintiff to have been concerned in the theft from  
the circumstance of his having been twice so seen at the coach,  
took the defendant on a *Sunday* to the plaintiff for the purpose of  
having him apprehended: that, when they came to him, neither *Smith*  
or any other person charged the plaintiff with a felony: that *Smith*  
said, “I have lost some cloth; but I don’t say that it was he who stole  
it: I know nothing of that; but stolen it was:” that defendant,  
being asked by plaintiff what authority he had to arrest him, pro-  
duced



1783.  
  
 LEDWITH  
*versus*  
 CATCHPOLE.

duced a hanger, and said, "That was his authority:" that he then did arrest the plaintiff, and took him to the Poultry Compter; from whence he was taken the next day before the sitting Alderman and discharged.

*Peckham* shewed cause against this rule; and insisted, that this case was very distinguishable from that of [a] *Samuel v. Payne and others*, upon the authority of which the defendant had ventured upon this application: that that case had decided no more, than that a peace officer is justified in making an arrest without a warrant in all cases, if a charge of felony is made upon the prisoner: that here on the contrary, though both persons upon whose charge the defendant pretended he came to take up the plaintiff were present, none was made by either; and one of them expressly disavowed the least knowledge of the plaintiff's criminality: and consequently that the defendant's conduct was as illegal as it was violent and unbecoming.

*Adair* Serjeant, Recorder of *London*, and *Davenport*, were in support of the rule for a new trial: and *Adair* admitted, that the present case had been well distinguished from that of *Samuel v. Payne*; upon the ground of which, the rule had been obtained: but insisted, that there was another ground upon which the rule might well be supported: that in the other case it had been decided; that where there is a *direct charge*, a constable is justifiable, though *no felony* had been committed: that here the ground, though different, is equally good: for that here there was a *felony committed* and also *very strong circumstances of suspicion* against the plaintiff stated to the defendant at the time; and in such a case a constable, acting *bona fide*, is, *without a positive charge* made, justified in apprehending. And that the defendant acted *bona fide* is unquestionable: he did not even know the plaintiff, and against a stranger he could not entertain malice. These circumstances were therefore, without the warrant of a magistrate or an express charge, a sufficient authority for the defendant, a *peace officer*; as by the most established law a *private person* is justified in apprehending upon suspicion, [b] if the party apprehended afterwards appears to have been guilty.

[a] E. 20 G. 3. 1780. Dougl. 345.

[b] Vide 2 Hawk. P. C. new Edit. 1787. tit. arrests by private persons. f. 18. p. 121.

*Buller, J.* But, if he acts on suspicion, must it not, to make it a justification, be a reasonable ground of suspicion in his own mind and [a] within his own knowledge, and not merely the information of others; for, if it is not so, he takes upon himself to judge of the evidence of others; when he ought to go before a magistrate, who is the proper judge.

*Lord Mansfield.*

How are felons in general taken up? From descriptions of them circulated in hand bills. The defendant here might be induced to suspect from what had been laid before him.

*Davenport* insisted, that as this transaction passed upon a *Sunday*, it was impossible to have referred the matter to a magistrate, as there is no fitting alderman on that [b] day: and that, if on this day peace officers could not on that account act at the suggestion of others in cases of strong probability, numberless felons must elude the hands of justice: and he cited [c] *H. P. C.*, where it is said, that in many cases of arrests "the constable may execute his office upon information and request of others that suspect and charge the offenders, *nay though it be but with suspicion thereof*:" and insisted, that in the present case it could not be said, that the defendant had acted upon a mere causeless suspicion or such as had not a probable foundation.

*Adair* now cited [d] *Statuta civitatis Lond.* (within which the arrest was made) as directly applicable. The preamble speaks of

1783.

LEDWITE  
versus  
CATCHPOLE.

[a] 2 Hawk. P. C. f. 18. p. 121. and tit. arrests by public officers. f. 11. p. 132.

[b] It appears from the state of facts in the case cited of *Samuel v. Payne*; that from this circumstance the plaintiff who had been committed upon a *Saturday* was not discharged till the *Monday*.

[c] 2. 89.

[d] The words of the statute are, "Le Rey qe veut la pes de citee estre bien garde entre tutez gentz ad entendu qe ces distz articles ne sont poynt tenuz ne estre ne poent pur ceo qe ses mynystrs sovent ou ceste e enquerelz e grevement punyz devant les avotours des pleyntes e aillours en la court pur enprisonementz e altres punyssementz de meffesours e de suspecionous de mal pur ceo qe il ne eurent de Rey garaunt a ceo fere dont les distz mynystrs ouceste e sont meyns osez a chastier e punir les trespassours e par tant sei abandissent de meffere e donna as autres ensauple de mauveyte a grant peril de la citee a grant nurture des meffesours veut e comande qe desormes nul de ses mynystrs seit enquerela devant ses auditours des pleintes ne aillours en la court pur nul enprisonement ou altes punyssement de meffesours ou suspecionous de mal si ens ne fait qe mynystre le fa.e par aperte malice e sa propre venjaunce ou par venjaunce de autre qe par malice le protrire e ne mys pur la garde de sa pes. E le Rey ceites purveaunces e ajousteementz veut qe en lavant dite citee seint bien e sauvement gardez pur sa pez meyntenir ove les amedementz quant il li plerra mettre pur le profit de sa citee." 13 E. 1. stat. 5. Ruffhead's Appendix to the Statutes. fo. 13.

ministers

1783. *LEDWITH*  
*versus*  
*CATCHPOLE.* ministers of justice; and it then proceeds, that they shall not be liable, &c. for apprehending or imprisoning persons suspected of felony, unless malice shall be proved. But the court hardly seemed to notice it [a].

*Peckham* now insisted, that, even in the view in which the question was placed by the argument on the other side, if ministerial officers might in these cases at their risque exercise a discretion, the jury, who were the proper judges of the fact of intent and malice, had pronounced that there was here no just cause of detainer.

*Buller, J.* This is a question of consequence, and will require some consideration. I think, that, if we were to say that a constable is justifiable in this case, we should go the length of saying, that he is to some purposes a judicial officer; which is going farther than has ever yet been adjudged. [b] It would be to allow a constable to examine witnesses, act upon their testimony though he cannot administer an oath, and judicially to conclude, whether there is or is not a reasonable ground of suspicion; and this might be attended with danger. Where a positive charge is made, the party making it is obliged to follow it up with a prosecution, or is himself liable to an action. In such case the constable is merely ministerial and bound to take the party up and carry him before a magistrate. The magistrate must then examine into the matter upon oath, which the constable cannot do.

*Willes, J.* A felony is committed. The prisoner looked into the coach, where the stolen goods were deposited at the time, and afterwards met the coach, where it stooped. Then called upon as the constable was to act and under such strong circumstances of suspicion, I think it became his duty so to act; and that there ought to be a new trial.

*Lord Mansfield.*

The first question is, whether a felony has been committed or not? And then the fundamental distinction is, that, if a felony has actually been committed, a private person may as well as a peace officer arrest: if not, the question always turns upon this, was the arrest *bona fide*; was the act done fairly and in pursuit of an offender, or by design or malice and ill will? Upon a highway rob-

---

[a] Probably, because a fact was in proof, from which the jury might have inferred malice; and therefore the provisions of the statute could not have carried the point farther in favour of the defendant than the court were disposed to do upon the general law.

[b] Vide the case of the *K. v. the Inhabitants of Hope Mansel*, in this term, ante p. 252., and the *K. v. Stubbs and others*. E. 28 G. 3. 1788. Durnford and East. 2. 395.  
bery

bery being committed, an alarm spread and particulars circulated, and in the case of crimes still more serious, upon notice given to all the sea ports, it would be a terrible thing, if under probable cause an arrest could not be made: and felons usually are taken up upon descriptions in advertisements. Many an innocent man has and may be taken up upon such suspicion: but the mischief and inconvenience to the public in this point of view is comparatively nothing.

It is of great consequence to the police of the country. I think there should be a new trial.

*Per Lord Mansfield and Willes J.*

Rule absolute.

The new trial came on at the sittings after this term, when a verdict was found for the defendant.

Rex v. Horner & al'.

Friday,  
May 30.

COWPER H. on behalf of *Richard Horner* and two others, who had been removed by *habeas corpus* from *Exeter* gaol, moved that they might be admitted to bail.

Upon application to bail, the court requires to see the deposti-

tions; and will from thence, if they see just cause, without regarding the regularity or irregularity of the commitment, discharge, bail, or detain the prisoner.

The commitment stated, that the prisoners were charged "with *defrauding and robbing John Cunnett of Dunsford, yeoman, at Crediton in the county of Devon, under divers false pretences of the sum of nineteen guineas in gold and a ten pound Bank of England bill;*" and that they were committed by a magistrate of that county to the county gaol "until the next general gaol delivery for the said county, or until they shall be thence delivered by due course of law."

To obtain property by fraud, and under a pre-concerted plan to rob, is felony; but this intent, the *animus furandi*, is a fact to be established by the jury, before the legal consequence can result.

Upon the information taken before the magistrate it appeared, that they decoyed the prosecutor into a public house, and had there obtained the money of him for the purpose of playing at cards; and after having prevailed upon him once to cut the cards for one of them (though he positively swore that he had not engaged in play on his own account) under pretence of his having lost the

Qq

money

1783.

REX  
versus  
HORNER  
& al'.

money to one of the confederates, they swept it off the table and went away with it.

And *Cowper* H. now contended, that the charge, as stated in the commitment, being short of a charge of felony and amounting to a misdemeanor only, the prisoners were intitled to be discharged upon bail.

*Cowper* T. opposed this application; and insisted, that if enough appeared upon the depositions [a] to satisfy the court that a felony had been committed, they would not suffer the public to be deprived of the benefit of the example, because there might be a defect in the form of the warrant: that whether the offence charged was or was not a felony, might be a matter of some nicety: but that cases of this nature had been often so considered.

*Buller*, J.

Similar cases have often been ultimately so considered: but in cases of this sort the course has always been to leave it to the jury to determine, *quo animo* the money was obtained; and if they should think that it was obtained upon a pre-concerted plan to rob the prosecutor of his money, that it would in such case be felony: Upon this principle at the Old Baily a man was prosecuted for felony, who had obtained money by dropping a ring, wrapped up in a bill or receipt, purporting that the ring had cost fourscore pounds, when in fact it was worth little or nothing: and upon this indictment the man was [b] convicted. The court in such a case never form any judgment whether the facts amount to felony or not; but merely whether enough is charged to justify a detainer of the prisoner and put him upon his trial.

*Per Willes and Buller*, Justices.

The practice of this court is, and upon reference to the officers of the crown-office we find it to have been long [c] established, that, even if the commitment were regular, the court would look

[a] Vide the case of the *K. v. William Clarke Esq*; M 18 G. 2. 2 Str. 1216.

[b] And afterwards in 1785 so determined by nine Judges. 1 Hawk. P. C. new Edit. 1787. tit. Simple Larceny. Note p. 135.

[c] So in a case where the party was clearly intitled to be bailed (being brought up on an *habeas corpus*, and the return set forth the warrant of commitment, in which the cause alleged was "a suspicion of having feloniously killed one *J. Lloyd*") Lord *Mansfield* said, "a man committed on suspicion only has a right to be bailed on the *habeas corpus* act; but then there should be the depositions taken before the Coroner produced, without which the court does not bail." *Rex v. Gregory*. H. 11 G. 3. 1771.

into

into the depositions to see if there were a sufficient ground laid to detain the party in custody; and, if there were not, would bail him: and so if the warrant of commitment were irregular, and a serious offence shewn to have been committed, they would not discharge or bail the prisoner, without first looking into the depositions to see whether there was sufficient evidence to detain him in custody.

1783.

REX  
versus  
HORNES  
& al'.

Motion denied.

Lord *Mansfield* and Lord Commissioner *Ashurst* were absent.

Rex v. *Pickersgill* & al'.

Wednesday  
May 28.

*DAVENPORT* moved for a rule to shew cause, why the return to a *certiorari*, to remove an indictment of the defendant at the quarter sessions of the county of *Middlesex* for a fraud and conspiracy, should not be quashed. A return to a *certiorari* need not be under seal.

The form in which the writ ran was, "To our Justices of Oyer and Terminer, &c. That you or one of you do send *under your seals, or the seals of one of you,*" &c.

And now he contended, that the return not having been made in compliance with the exigency of the writ, as not being under seal, could not be supported. [a]

*Morgan* opposed this application, and insisted; that it was not necessary, and was not usual in writs of enquiry, where it is so directed: and he appealed for this fact to the under-sheriff of the city of *London*, then in court, who confirmed him.

*Buller, J.*

It has been usual not to return coroner's inquests under seal.

*Davenport*, after some consideration, withdrew his motion.

---

[a] In the case of the *K. v. Atkinson Esq;* May 10, 1785 this was one of the errors assigned before the House of Lords; but was abandoned upon the argument.

1783.

Saturday,  
May 31.

## R. v. Inhabitants of Winterfett.

Upon a refusal by the master's wife to receive a hired servant, who had been prevented

from entering into the service for the first month by illness, and the servant's mother saying in his presence, that the quantum of wages should be left to the master and mistress, if any abatement is made in consequence, it is no settlement.

Absence at any period of the service is purged by being received again.

A master is bound to support his servant in every period of his sickness.

Settlement at Stainburgh.

**T**WO Justices by an order remove *George Challenger* from the township of *Winterfett* in the West Riding of the county of *York* to the township of *Stainburgh* in the same riding. The sessions on appeal adjudged the settlement to be in *Winterfett*, quashed the order, and stated the following case:

That about three years ago the pauper was hired at *Barnsley* statutes, which are held a few days before *Martinmas*, to *Thomas Oundsworth* of the township of *Stainburgh* for one year, received 1 s. for his Godspenny, and was to have three guineas for his wages: that that very night of the hiring the pauper *fell ill* and continued sick and unable to go, and *did not go into his service till a month after Martinmas*; when the pauper and his mother went to the master's house, who being from home they were shewn to his wife; who complained that the pauper had not come to his service according to the agreement, and *therefore refused to receive him*: whereupon the pauper's mother said, "*we must fall into your will for wages, and take what you will allow us*;" and left the pauper in his service, where he continued until *Martinmas* following: when the mother was sent for and received for forty-eight weeks wages after the rate of 1 s. 2 d. per week; being *less than the rate of the original wages*.

*Fearnley*, being called upon by the court to support the rule for quashing the order of sessions, insisted; that an actual or a legal service for a year with an inhabitancy of forty days was all that was necessary to be shewn here for the purpose of a settlement: that the payment or non-payment of the intire wages, even where the ground upon which the abatement had been insisted upon was just and warrantable, could make no difference; if the master, after the fact upon which the objection was founded had happened, continued the pauper in his service, and the pauper completed his year: that this was settled by many authorities

ties [a]. That, if it were not so, upon any subsequent displeasure conceived by the master a poor man might be compelled to engage in an expensive suit, or relinquish the earnings of his labour, as well as lose his settlement. But that in the present case the point made on the other side being the sickness of the pauper, and that being the visitation of God, his sickness could not be imputed to him as negligence or default; and consequently that in the eye of the law he was as much in the service during his absence for such a cause, as if he had been labouring under his master's roof: that under these circumstances to have deducted any part of his wages without his agreement would have been injustice, and an injury for which an action would lie: that it was equally clear, that at what period of service an absence happened in any case, was perfectly indifferent, if the servant was received again: but that he was not prepared with authorities, as he had not expected to be called upon, not supposing it possible, that an attempt would be made to support this order. That, when the pauper went into the service, though his mother consented that he should lie perfectly at mercy with respect to the terms upon which the contract was to be continued, yet it was still the same, and no new, contract, and bound by the same Godspenny. That if a settlement was in any case to be favoured (and it was every where said that in all cases they ought) the court would not suffer, and that contrary to the intention on both sides, a favoured right to be defeated by a technical and critical interpretation of a concession, made by an ignorant man, in a case in which the justice as well as the law was strongly with him. But that there was no pretence to say that the original contract made between the boy and his master was by this talk with the wife and general submission by the pauper's mother on his behalf, annulled, and a new contract substituted: that the pauper was a legal or constructive, though not an actual, servant, from the first moment of the year, in which he had originally contracted to serve: that to take the question in the opposite point of view: Suppose the mother of the pauper had in his presence told even his mas-

1783.

REX  
versus  
Inhabitants  
of  
WINTER-  
SETT.

[a] Rex v. Inhabitants of Hanbury. 26 & 27 G. 2. 1753. Burr. Settl. Caf. 322, &c. and in the case of the K. v. the Inhabitants of Westerleigh. M. 14 G. 3. 1773. Burr. Settl. Caf. 753. it was said by *Alton J.* "As to abatement of wages, there are several cases, in which that has been holden to signify nothing."

ter,



1783.

REX  
versus  
Inhabitants  
of  
WINTER-  
SETT.

ter, that unless the boy should have a coat into the bargain, or some other small gratuity, or rather generally *something more* (for no specific abatement was stipulated in the present case) he should not enter upon his service; though the law in this case would have aided the master, as in the other it would the servant, was it conceivable, that the consent of the master to yield this indefinite *something* could be holden, and in this kind of transaction and between such parties, to have cancelled the subsisting contract? That the uniform language of the court had been, that in these kind of adjudications, the subject of which were the parole contracts of ploughmen and farmers at country fairs, the rule of construction ought more especially than in any other to be plain and simple, without refinement or subtlety, and level to the common understanding; and that he trusted the present decision would not form an exception to that rule.

Lord Mansfield.

The service had never commenced under the first contract: if it had, no doubt the master must have supported him in his sickness. But that is not the question: the point is, that the agreement acted upon here was a fresh agreement, when he recovered from his sickness; and the beginning of his service was then. Under the former the mistress refused to receive him. Then considering the old contract at an end, the *actual service* was but for eleven months; that is, to the *Martinmas* next: and the submitting to the abatement of the month's wages at the end of the year is an affirmance of the agreement made by his mother; and this, as rescinding the original agreement, destroys more than the *legal or constructive service*; it shews also that there was no hiring for a year: so that both the hiring and service must be considered as imperfect and ineffectual.

Buller, J. If a servant is taken ill after the service has commenced, the master is bound to support him, and cannot turn him away on that account. But it is not true, that the service began under the first contract. That was executory. It was made some days before *Martinmas* to commence ~~at~~ *Martinmas*; and in fact it never commenced. When the pauper went, they made a new contract, and under that his service commenced. [a]

[a] Slender circumstances have been holden to constitute the difference between contracts with respect to their continuance or dissolution, and to decide whether services under them would or would not connect for the purpose of giving a settlement. Vide the K. v. the Inhabitants of Grendon Underwood. Tr. 23 G. 3. 1783. post. p.

*Willes, J.* concurring,  
Lord Commissioner *Ashurst* was absent.



Rule discharged, and  
Order of sessions quashing the  
Order of two justices, affirmed.

1783.

REX  
versus  
Inhabitants  
of  
WINTER-  
SETT.

Monday  
June 2.

Two days after, on the last day of term, *Fearnley* said, he had looked into the authorities; and begged leave to state a case or two applicable to this subject: that in the case of [a] the *K. v. the Inhabitants of Hanbury*, it was laid down by *Lee Ch. J.*, "that the absence of the servant in the *beginning* does *not* make any real difference at all: for *service* has not been taken strictly, tho' *hiring* has."

Lord *Mansfield*.

Whether at the beginning, middle or end of the term, if the service begins, absence is the same at all times: but the ground the court went upon was; that here, under the hiring for a year, it never began at all.

*Fearnley*. That upon the subject of the period at which the service had its legal commencement, he must not presume to repeat what he had before submitted; but that, even in that view of the question, and supposing the hirings to have been *ejusdem generis*, they might legally be connected; and would, if either were a hiring for a year, give a settlement. That in the case of [b] the *K. v. the Inhabitants of Fifehead Magdalen*, where there were two hirings in the same species of service, though the new contract was not only for a different sum and that near doubly the amount of the original contract, but also where there was an actual discontinuance of an hour between the two contracts, *Lee Ch. J.* held, that "the *sameness of the contract* has not been so strictly insisted upon, as to make it absolutely necessary that it should be under the *very same bargain*:" and *Probyn* said, "It is the *same service*, tho' performed under *two contracts*": [c] That here the difference in the amount of the wages was not made the subject of contract

[a] Tr. 26 & 27 G. 2. 1753. Burr. Settl. Caf. fo. 326.

[b] M. 11 G. 2. 1737. Burr. Settl. Caf. fo. 118.

[c] But this is a ground which Lord *Mansfield* would not admit in a case, where the hirings were *ejusdem generis*. He says, "upon his return he does not agree to continue the  
"old

1783.  
 ~~~~~  
 REX
versus
 Inhabitants
 of
 WINTER-
 SETT.

tract between the parties, or even, as appeared by the case, ascertained upon any principle in the final settlement dictated by the master: that therefore, though they were to be taken as two different contracts, still the law was the same; and that under such a service a settlement is acquired.

Lord *Mansfield*.

Then the service under the last hiring for a year was there coupled with the former service under a hiring for less than a year. Here there are also two hirings, but there was clearly no more than one service, and that for less than a year. Your cases are good law; but they don't apply.

Fearnley further contended, that as no second hiring had been stated in the case, it ought to be returned to the sessions, to have that fact found.

But the court were of opinion, that this was unnecessary, as they had found enough to shew, that there was no service under the first.

Saturday,
 May 31.

Rex v. Stevens.

The authority given by the stat. 43 Eliz. c. 7. to convict before any justice, &c. of a county, city or town corporate, where the offence shall be committed, is constructively given to any justice, &c. of any place, district or liberty, in any county where &c.

THE defendant had been convicted under the stat. of 43 Eliz. c. 7. [a] by a Justice of the peace for the isle of Ely in the county of Cambridge, for unlawfully breaking and cutting hedges and fences in the said isle and county, with intent to take and carry away the said hedges and fences.

or town corporate, where the offence shall be committed, is constructively given to any justice, place, district or liberty, in any county where &c.

The

“old service, but makes a new contract for more wages. There was therefore a complete abandonment and discontinuance.” Rex v. Inhabitants of Ellisfield. H. 17 G. 3. 1777. ante. p. 4. And it is farther observable, that his lordship there represents the court in the K. v. Fifehead Magdalen to have gone not upon this ground, which the reporter expressly states that every one of the Judges took, and that they adjudged it not to be a discontinuance, but upon the principle that there could not be a fraction of a day; of which there is not the smallest trace in the report. His lordship therefore appears to have been long and strongly impressed with this idea, as he first brought it forward at a time when, as far as it went, it operated against the judgment that the court pronounced.

[a] The words of the act are, “Before some one justice of peace, mayor, bailiff, or other head officers of the county, city or town corporate; which said justice or other head officer shall have power, by force of this statute, to minister the said oath, where the offence shall be committed, or the party offending apprehended; shall give the party and parties such recompence and satisfaction for his and their damages, and within such time

The isle of *Ely* is a district, a liberty, or one of the divisions of the county of *Cambridge*, and not a city or town corporate.

The conviction had been removed into this court by *certiorari*, and *Partridge* had moved to quash it; and now in support of the rule he contended, that the justice before whom this conviction was had, was not such a magistrate, as was under the statute authorised to convict: that he was a magistrate only within the division of a county; and consequently did not answer the description of any one of those persons, to whom this authority was delegated: that this statute, which gave the authority, was also the statute which created the offence; and consequently, that it could not possibly be contended, that the general jurisdiction of a justice of peace could attach upon it: that in the stat. 27 H. 8, by which [a] the King is empowered to make justices of the peace, it is directed, [b] that particular persons, viz. the Bishops of *Ely* and their temporal stewards, shall be justices of peace within the isle, and have all the powers annexed to the office of justice of peace in any county: that by this designation these persons are invested with authority and powers equivalent to those of the general justices of peace in the realm at large: but that these are the only *general* justices within the isle: and therefore that this power does not extend to *common* justices, who act only within the *liberty* of the isle; such magistrates not being justices of the county, or armed with their powers. That the statute of *Eliz.* was a new act, introductive of a new power, not before given to justices; and must therefore be construed strictly and not extended by any intendment: That the acts of parliament respecting the poor, which were meant to be general and to comprehend all justices, enume-

1783.

REX
versus
STEVENS.

“ as by any one such justice of peace of the said county *where such offence shall be done* without the liberty of any city or town corporate, or by such head officer or justice of peace within any city or town corporate, shall be ordered.” s. 1.

[a] Sec. 2.

[b] The words of the act are: “ That *Thomas*, now Bishop of *Ely* and his successors, Bishops of *Ely*, and their temporal steward of the isle of *Ely* for the time being and every of them, shall from henceforth be justices of peace within the said isle; and shall use and exercise all manner of things within the same isle, that appertaineth or belongeth to any justices of peace within any county of this realm of *England* to do, exercise and use, by virtue and authority that they be justices of peace, in as ample and large manner as any other justices of peace in any county within this realm have or might do, exercise or use.” s. 20.

R r

rate

1783.

~
 REX
 versus
 STEVENS.

rate the justices of *divisions* [a]: that the stat. 3 W. & M. which imposes a penalty upon churchwardens or overseers, neglecting to publish in the church notices of the residence of paupers, directs [a] that

[a] Doubts having in the case of several acts of parliament been entertained upon the construction of this word, I have thought fit in this place, to subjoin a modern authority upon the subject.

It is said by Dr. Barn in his observations upon stat. 43 Eliz. c. 2. in his Justice of Peace (1) that "in some of the ancient statutes, not now in force, as particularly the 22 H. 8. c. 12. the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statutes, that the justices of the *division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no *division* in the sense which the statutes intended; and consequently it cannot be necessary to set forth now, that the justices are *in or near* (2) the *division*": and in the case of an order of removal the objection, that the order did not state that the magistrates were of the division, has been (3) repeatedly over-ruled: the court saying, "that, as to this, the statute was only directory; and not restrictive or qualificatory."

The later authorities have confirmed this doctrine in the case of other legal instruments, as in that of a conviction (4) upon the stat. 2 G. 2. c. 28. f. 11. And yet this requisite, that the justices shall be of the *division*, is still continued: and upon this subject the necessity of its being so is (5) insisted upon by the legislature, and exceptions where that necessity did not appear so urgent (6) have been introduced, and this act as not imposing sufficient checks (7) has been in part repealed by a more modern statute, the general power left

(1) Vol. 3. 330. tit. Overseers. Edit. 1785.

(2) And in stat. 18 Eliz. c. 3. concerning bastards, where the words of the act are, "two justices in or next unto the limits where the parish church is," it was objected, that this being a particular power given to the justices of peace, it must be precisely pursued: And Wild, Justice, said, Several orders had been quashed for this exception; but contrary by Twissden and Rainsford, The parish and parish church is all one by intent." M. 26 Car. 2. 1664. 3 Keb. 383.

(3) Anonymous M. 8 W. 3. 2 Salk. 473. Eliz. Ashley's case. Tr. 9 W. 3. Ib. 480. And Lord Mansfield in the case of the K. v. Loxdale and four others, said, "as to the justices *in or near* the parish or division. It is only directory." H. 31 G. 2. 1758. 1 Burr. 447.

(4) H. 11 G. 2. 1737. Andr. 81. K. v. Bryan.

(5) In stat. 2 G. 2. c. 28. f. 11. after reciting "whereas many inconveniences have arisen from persons being licensed to keep inns and common alehouses, by justices of the peace who, living remote from the places of abode of such persons, may not be truly informed as to the occasion or want of such inns or common alehouses, or the characters of the persons applying for licences to keep the same," it was enacted, that "no licence shall be granted &c. but at a general meeting of the justices of the peace, acting in the *division* where the said person dwells, to be holden for that purpose on the first day of September yearly, or within twenty days after, or at any other general meeting of the said justices to be holden for the *division* wherein the said person resides."

(6) S. 12. Provides that nothing in that act shall extend to alter the method or power of granting licences, &c. in a city or town corporate.

(7) The stat. 26 G. 2. c. 31. f. 4., after reciting that the stat. 2 G. 2. c. 28. f. 11. had enacted, "that no licence shall be granted, &c. but at &c. or at any other general meeting

[a] that it shall be enforced by "any justice of the peace of the county, riding or division, city or town corporate, &c.": and that there is a difference between ridings and divisions in counties: that in stat. 8 & 9 W. 3. [b] the power of enforcing costs on appeals in cases of

1783.

REX
versus
STEVENS.

left (8) in the *same* justices and the certificate directed to be signed by some *neighbouring* (9) justice; though in a recent case upon the statute 2 G. 2. it has been adjudged, that any justice within the county, acting within the division, is for this purpose a justice of the division.

Rex v. Sir John Powell Price, Bart.

M. 12 G. 3. 1771.

THE defendant had convicted a woman of selling ale in *New Town Montgomeryshire* without a licence. In fact she had had a licence, granted by two justices (both of them living out of the division, one of them till this occasion never acting there, and the other having occasionally only and in very few instances done so) at a meeting which the defendant and another justice of the division had appointed, but at which neither of them attended. The two justices, who came for that purpose, proceeded to business without the justices of the division, and granted licences to this woman and some others. Previous to the conviction the defendant consulted Sir Fletcher Norton upon the case: who being of opinion that the licence was void, not having been granted by two justices acting in the division, advised the conviction of the woman. She applied to the court for an information, which was granted; and the defendant was convicted at *Shrewsbury* summer assizes 1771 cor. Leigh, Serjeant, Judge of assize. At the trial there was some evidence of ill will from the defendant towards the woman: and the opinion of Sir Fletcher Norton was given in evidence for the defendant.

Bearcroft moved for a new trial on two grounds; and insisted, first that the defendant, having taken the opinion of counsel, under whose advice he had proceeded, could not be said to have acted maliciously; and, if erroneously only, could not be criminal. And secondly, that he acted legally, the licence being absolutely void, (10) not having been granted by two justices acting in the division. The serjeant who tried the cause, reported against him upon the first ground, and that there was evidence of malice; and the court thought the licence granted by the justices, though not those who generally acted for that division, was legal; for *per* Aston, J. Any justice of the county, going to the meeting in the division, is for this purpose a justice of the division.

ing of the said justices to be holden for the division wherein the said person resides" (which regulation, "by reason of the last mentioned provision, has been found by experience not to have the effect intended") then enacts "that the last before mentioned provision is hereby repealed; and that the day and place &c. shall be appointed by two or more of the justices acting for the division by a warrant under their hands and seals, &c. directed to the high constable, &c. of the said division."

(8) S. 2.

(9) By s. 3. such certificate as aforesaid (i.e. under the hands of the parson, vicar or curate, and the major part of the churchwardens and overseers, or else, &c.) to be signed by some neighbouring justice.

(10) The contrary seems to have been the prevailing opinion in the case cited of the *K. v. Bryan*. See, Ch. J. "As to the point, whether a person acting under a bad licence

R 12

incurs

[a] c. 11. s. 5.

[b] c. 30. s. 3.

1783.

~
 REX
 versus
 STEVENS.

of settlements is given to justices of the county, *riding*, city, *liberty*, town corporate, &c.: and in the same statute the clause, [a] that respects poor apprentices, speaks of justices for the *liberty or riding*: and that consequently the legislature must have supposed, that without these words the justices in general were not in these cases empowered to act: that there would on this account be no failure of justice, as the magistrates of the county at large have jurisdiction in the isle of *Ely*: that their commission is to act "as well within liberties as without;" and that it is so in this particular instance, though it is otherwise in such cities as have exclusive jurisdiction.

Sir *Thomas Davenport*, shewed cause against the rule; and insisted, that, if no other objection were made than that of want of jurisdiction in the magistrate, the court would construe remedially all acts meant remedially for the use of the whole kingdom; and that the jurisdiction must be supposed to be given, wherever the offence can be committed: that the words used by the legislature were put only as instances, and by no means used as an exclusive [b] enumeration of those only, to whom the trust was delegated: that a contrary construction would exclude from the benefit of this act large districts of *Lincolnshire*, and almost the whole county of *York*; where the commissions for the several ridings are different, and none of them for the county at large: that the stat. 15 *Car.* 2. c. 2. in the preamble, in which it recites the provisions of this act, states, that in such cases one justice, &c. "of the county or place where such offence was committed," shall interpose, &c.: that this is a legislative construction of the act; and consequently that the words "county, city, &c." are intended to include every thing that is any part of counties, &c.: that, if this were a particular

incurs the penalty, where the licence plainly appears to have been granted contrary to the act, it may perhaps be too much to say, that it ought not to be considered as absolutely void as to the party, as this is a particular kind of jurisdiction, and the words of the act are "null and void." But this is not the present question.

Page, J. If a licence is granted improperly, as by justices living out of the division, it is not void as to the person acting under it; who probably does not know the exact bounds of the division.

Probyn, J. If this point was now in question, it would deserve consideration, "whether the justices can punish a man by this statute, who acts under a visible authority."

[a] S. 5.

[b] This should seem to be so; for in the very first clause of the last cited act, stat. 8 & 9 W. 3, commonly called the certificate act, upon the subject of the certificate itself the word, "riding," is omitted.

act

act framed for any particular purpose, the narrow construction put on the other side might be supported; but that where its object is general, the words must be used only as instances; and that under the general names of the principal places every thing subordinate, every subdivision and smaller district, would be taken to be included.

1783.

REX
versus
STEVENS.

Lord *Mansfield*.

I do not rest much upon the recital of the act of *Car. 2.*; but we must not put a construction upon this act wholly to defeat it: as would, if we adjudged this conviction to be illegal, be the case throughout the county of *York*. It must mean, the justices for that place in the county, where the offence is committed.

Willes and *Buller*, Justices, concurring,
Lord Commissioner *Ashurst* was absent.

Rule discharged and
Conviction affirmed.

Trinity

Trinity Term

23 Geo. 3. 1783.

Wednesday,
June 25.

Rex v. Inhabitants of Upton Gray.

It is not necessary to the validity of an order of Filiation, that the putative father should be present at the examination of the woman before the two justices.

TWO Justices adjudge *Walter Nation* of the parish of *Froyle* in the county of *Southampton*, servant, to be the reputed father "of a female bastard child begotten on *Sarah Arundell*, and that the said child was chargeable to the parish of *Upton Gray* in the said county; and that he should pay, &c. and also one shilling weekly, &c."

Where a reason is assigned as the foundation of a judgment, all presumption or intendment that the court went upon better grounds, is there excluded.

The sessions on appeal quashed this order and stated as follows: Upon hearing the order (as above stated) read, and what was alledged by counsel thereupon, and *it not appearing upon the face of the order, that the said Sarah Arundell was examined in the presence of the said Walter Nation at the time of making the said order*, this court is of opinion and doth adjudge, that the said recited order ought to be quashed; and the same is hereby quashed accordingly.

Mingay shewed cause in support of the order of sessions; and admitted, that he could not, upon any general principle or authority, maintain, that it was necessary to the validity of an order of Filiation, that the examination of the woman must be had in the presence of the putative father.

But

But he contended, that the reason given by the sessions, however erroneous, would at most be considered as surplusage: that all courts, having jurisdiction over the subject upon which they had pronounced, were intitled to every intendment in their favour: and that there might have been other reasons.

Lord Mansfield.

They give none. The presence of the putative father is not necessary before the justices out of the sessions; and, as the sessions have stated this and no other to have been the foundation of their proceeding, we cannot presume, that they went upon any other.

Willes and Buller, Justices, concurring,
Lord Commissioner Ashurst was absent.

Rule absolute,
Order of sessions quashed, and
Original Order affirmed.

Rex v. Edward Pryse Lloyd, Esq;

Wednesday,
June 25.

BOWER had obtained a rule to shew cause, why an order of the court of quarter sessions of the county of Carmarthen, (whereby it was ordered that Mr. Edward Jones, attorney at law, be employed to bring an information against the defendant for several crimes and misdemeanors committed by him in the execution of his office of justice of peace for the said county, and that the expences attending such prosecution be defrayed by the county) should not be quashed.

It was now moved to be enlarged.

Sed per Buller, J.

The *certiorari* ought not to have issued. It is settled in the case of [a] the *K. v. Lediard*, that a *certiorari* does not lie to remove any other than judicial acts.

Bower urged, that this act of the sessions was clearly illegal, and such an excess of their authority as it was impossible to support.

A *certiorari*
does not lie
for other
than judicial
acts.

22 TLR 607.
[1906] 2 K B 571
952 P 370.
752 TLR B. 750.

[a] M. 25 G. 2. 1751. Sayer 6. It was the case of a *certiorari* to return what amounted to no more than the warrant of a magistrate, a ministerial act.

1783.

Rex

versus

LLOYD, Esq.

The court admitted this; but said, Then you may punish the justices for making it.

Rule discharged and
Certiorari quashed.

Tuesday,
July, 1.

Robson v. Hyde, Esq. & al'.

A private building, always used as a chapel, and by contract never to be used for any other purpose, is, if a profit is made of it, rateable to the poor.

THIS was an action of trespass for breaking and entering the plaintiff's dwelling-house, &c. The defendants, as magistrates and officers acting under their orders, pleaded the general issue, upon which issue was joined. The cause came on to be tried before Lord *Mansfield* at the sittings for *Westminster* after *Easter* term last; when a verdict was found for the plaintiff, subject to the opinion of the court upon the following case:

That the mayor and commonalty and citizens of the city of *London* demised to the vicar and churchwardens of *Saint Martin in the Fields* a piece of ground in *Conduit Street* in the parish of *Saint George Hanover Square* with the chapel and vestry-room thereon erected for 40 years from *Lady-day* 1768 at the yearly rent of 18 l. 15 s. 0., with a covenant that the lessors should at the end of every 14 years at the same rent and under the same covenants execute a new lease of the premises from time to time for ever; they the lessees paying for every such renewal into the chamber of the city of *London* the sum of 131 l. 5 s. 0. by way of fine.

The case then stated an under-lease from *June* 24, 1776 from the churchwardens and vicar of *Saint Martin* to the plaintiff and two others of the same premises for 31 years and a half renewable for ever at the sum of 120 l., clear of all taxes: The said under-lease among other covenants contained the following: "That
" the lessees should let use and continue the present chapel, and
" any new building to be erected instead of the said chapel, as and for
" a chapel for the whole of the said term; and permit the service
" of the church of *England* only to be used therein as by law
" established, in like manner as the same hath been and is now
" used and exercised therein, and not for any other use or purpose
" whatsoever: and should pay to the clergymen and other officer
" or servants officiating at, or belonging to, the said chapel, a/
" the

DLTMC. 63.
64BD 393.
1 PLR 155.
705] 1KB 457.
4LT KB. 164.
12LP 119.
53WR 266.
13PLR 38.
907] 1KB 37.
152P 799.
76LT KB 36

“ their salaries and allowances: And also should defray all other
 “ charges and expences attending the support and maintenance of
 “ the said chapel or in any ways relating thereto; they receiving
 “ all the rents and emoluments from pews or seats in the said chapel
 “ from the 29 September 1776, &c.”

1783.

ROBSON v.
 HYDE, Esq;
 & al’.


That the plaintiff is the surviving lessee. That the rent reserved by the last mentioned lease has been always applied to the public and charitable purposes of the parish of Saint *Martin*. That the plaintiff lets the pews and receives the rent thereof for his own use and benefit; and the said building now is and ever since its erection, which was about 1695, has been applied to no other use than that of divine worship according to the rites of the church of *England*. That the parish of Saint *George Hanover Square* upon the 27th of April 1782 rated the plaintiff in respect of the said building to the relief of the poor; and the defendants distrained for non-payment of the said rate. That the said building never has been rated before.

The question for the opinion of the court is, whether the plaintiff in respect of the said building is rateable to the poor?

Chambre for the plaintiff contended, that he was not rateable under the *st. 43 Eliz. [a]* as occupier either of house or land: that, however the act might be extended by construction, it certainly was not the intention of the legislature to charge places of public worship: that the court has in many instances restrained the general words of a statute, as not being there meant in their largest and most extended signification: that such is the construction put upon the statute concerning church leases; where it has been holden that bishops cannot have been meant to be included [b] or they would have been mentioned: that with respect to this kind of buildings the construction of law ought to be the same; for they are not mentioned in the act: that not being to be found in the number of the objects of charge, they are not in point of law subject to it; and never having in experience or usage, never having in point of fact, been attempted to be charged, it is manifest they were never intended to be so. That if it be said that he makes a profit of the pews, it may be answered, that so do most of the clergy in such great towns as are places of genteel resort:

[a] c. 2. s. 1.

[a] Vide 2 Rep. 46. b. Sir W. Jones. 186.

1783.

 ROBSON v.
 HYDE, Esq;
 & al'.

that the whole of the beneficed clergy derive a profit from the breaking of the soil to make graves, and for vaults and monuments in the chancel a very considerable one; and that no demand like the present was ever heard of on this account. But that it is not true that the plaintiff, like the clergy, is sure of a profit: that it is true, that he is bound to pay the clergyman his salary and the servants their wages: that whether his profits will even so far indemnify him cannot be ascertained; but that, how far soever they may fall short, it is not in his power to apply the building to any other uses: that, tho' this chapel was neither consecrated or endowed, yet as it was lawfully established, it was not to be distinguished from the case of any church, in which the parson makes a profit of his pews; and that this was the first instance in which an attempt had ever been made to assess a place of public worship according to the rites of the church of *England*.

That under the above circumstances the payment of the sum reserved was not in the nature of a rent: and that to say the contrary would be to discourage religion; as dissenting meeting-houses, tho' also legal, could not otherwise be supported: and that it had been adjudged [a], that a house, converted into a conventicle and used for no other purposes, was not rateable to the poor.

Batt for the defendants insisted; that, tho' the particular facts in this case might have never come before the court, yet the principles on which they must be decided were well known and established; and as old as the *Stat. 43 Eliz.*: that the rule is, that whatever yields a permanent, annual, profit is a proper object of taxation: that it is so laid down in all the books: that the plaintiff is lessee, and by the express terms of his lease collects the money paid for the pews: that here then is a beneficial lease, out of which arises a permanent revenue.

That with respect to the occupation, if the plaintiff is not the occupier, who is? that he is occupier as much as the subject will admit of occupation; and occupation can only be considered with reference to the subject-matter. That he is at least as much so,

[a] H. 1 G. 2. 1727. Anonymous. Cases of Settl. 126. Copied from thence into Vin. Abr. tit. Poor. 426.

as a parson who lets his tithe: that the case of [a] the *K. v. the Inhabitants of Saint Thomas in Southwark* was expressly in point: that it had decided, that a preacher of a meeting-house, who does *not* let the pews and does *not* thereby make a profit, is not rateable or chargeable as occupier any more than any of his audience: that this case is totally different from that of a church, which is a public building, and where, upon any deviation from the purposes of the institution, abuses would be remedied by the ecclesiastical courts: that this is on the contrary a mere private building, the application of which to its present and proper purpose could only be enforced by the restraining covenants: that whatever the plaintiff did with it, he could not be criminal: he could not be pursued by ecclesiastical censures: that his conduct would only be regulated by mercantile ideas, by a consideration of profit and loss: that, if he pleased, he might turn it into an auction-room: that it was constructed for the purpose of gain, and considered and transferred as other property. But it is by no means clear that a parson is not rateable, if he makes a profit of his pews: he is expressly so for his other property: and why not for this? but it has been urged, that this is a novel attempt, and unheard of before: that the reason why the question has not occurred till of late, is that it is but of late times and from the great increase of buildings and population in the places of public resort in this country, that the building of chapels is become a common adventure, and an object of speculation to individuals; and that the charges for the maintenance of the poor having become every day heavier had made men look round to every object from which profit may be derived. That he might admit the law of the case which had been found in *Viner*, as it was perfectly consistent with his argument: but that it certainly was a very loose note and taken from a book of little or no authority.

Chambre urged in reply, that the proper subject matter of a rate for the relief of the poor had been very truly represented to be a *permanent* profit: but that the present was on the contrary altogether *casual* and *uncertain*. That he also readily adopted another idea suggested on the other side, as it furnished him with another plea of exemption. That it had been stated, that the undertaking of these

1783.

ROBSON v.
HYDE, Esq;
& al'.

[a] H. 13 G. 2. Stra. 745.

1783.
 ROBSON v.
 HYDE, Esq;
 & al'.

buildings was a matter of speculation and that they were mere *adventures*: that it had been holden that taxes upon adventurers, whose profits are uncertain, are hard, and that they are [a] therefore excused; and that the legislature probably meant [b] in order to encourage men to proceed in works of public utility, to exempt them: and that they thought it would be dangerous to discourage adventurers by subjecting them [c] to a tax.

That as to the question asked, who is the occupier if the plaintiff is not? it is enough for me that the plaintiff is not. That nothing is more clear than that the plaintiff cannot legally apply this chapel to any other purpose than that of religious worship; and that the court will never presume misconduct and breach of covenant.

Lord Mansfield.

The doubt in this case can only have arisen from the use of the word "chapel"; but this building is not such in an ecclesiastical sense. It is not a consecrated place, the ecclesiastical law cannot take notice of it. It is a mere private room, let out it is true at present for the purposes of religious worship; but which at his pleasure the owner may apply to any other use. It is said indeed, that he is restrained from doing this by covenant; but the restriction by covenant does not vary the nature of the property. If indeed it were absolutely given to the public, it might be a strong ground to say that it was not rateable; in his hands at least, out of whom the property had passed, and by whom nothing is reserved. But the temporary use to which it is applied cannot vary the nature of the case. He might convert it into an assembly or concert room; and in that shape would it not be rateable? under this then, the most beneficial, mode of enjoyment shall a plea of exemption be admitted? If another, and that clearly a more lucrative one, were once suggested, the lessor and lessee would presently understand each other; and the argument from the restrictions of the covenant would not long continue a bar to the establishment of this charge.

[a] Lord Mansfield in the case of Rowlls v. Gell, and al.' E. 16 G. 3, 1776. Cowp. fo. 453.

[b] Lord Mansfield in the case of the Governor and Company for smelting down lead, &c. v. Richardson, esq. and others. M. 3 G. 3, 1762. Burn's Justice. vol. 3, 591. MS. This case is also reported in 3 Burr. 1341. and 1 Blackst. 389.

[c] Ib.

Buller. J.

Buller, J.

The argument on behalf of the plaintiff is supported by a false analogy. His case does not resemble that of a clergyman. But, if it did, I am very far from being satisfied, that a member of the established church, a parson or vicar, who has the profits of the pews given him by the parish in increase of his benefice, is not rateable for such profits. There is also another important difference. One reason, that the law has continued tithes to the clergy, is that it has prohibited their following any other occupation : now the plaintiff is subject to no such restrictions. And to mark the difference still more strongly, every beneficed clergyman in the kingdom, even the poorest of our vicars, (and many there are whose pittance is only 20*l.* a year) pay their proportion to the poor. No principles of law then, any more than the interests of religion, prevent the public from calling upon this man for his full proportion.

1783.
ROBSON v.
HYDE, Esq;
& al'.

Willes, J. concurring.
Lord Commissioner *Ashurst* was absent.

Postea to Defendants.

Vide the case of the *K. v. Waldo, Esq;* in this Term, *post.*

Atkins & al' v. Davis & al'.

Wednesday
July 2.

THIS was an action of trespass for taking the plaintiff's goods. The defendants, as constables, pleaded the general issue, upon which issue was joined. The cause came on to be tried before Lord *Mansfield* at the sittings for *London* after *Trinity* term last at *Gustabull*; when a verdict was found for the plaintiff, subject to the opinion of the court upon the following case:

Under the construction of the riot act, which speaks of ability in general and does not specify, as the stat. 43 Eliz.

does, any *particular taxable object*, or refer at all to that statute, all persons, having personal property within the district assessed, are inhabitants; and as such rateable.

That the plaintiffs are trustees of the company of the proprietors of the *London* bridge water-works; and it was admitted that they were intitled to bring this action.

That

1783.
 ATKINS & al'
versus
 DAVIS & al'.

That the company is not incorporated; and that their property consists of

- 1st. Their offices, with the wheels and works for raising the water.
- 2d. A wharf, called *Mault's Wharf*.
- 3d. A house for the use of their secretary, detached from their works and wharfs.
- 4th. A fire engine, used for raising the water to a proper height, also detached: and
- 5th. The pipes, trunks, branches, &c. laid and dispersed in the different streets, not only in the city of *London* but in the county of *Middlesex* and borough of *Southwark*, for the conveyance of their water.

That the whole of this property is within the ward of Bridge Within; except the works with their pipes, trunks and branches on the *Southwark* side of the river, and except such parts of the pipes, trunks and branches, as are a continuation from the pipes, trunks and branches within the said ward and which are from thence dispersed in the different streets out of the said ward, and out of the said city of *London*; but are all originally derived from and connected with the pipes, trunks and branches within the said ward.

That the whole profits arising from the water-works, and which consist of rents paid by the persons supplied with water from the said works, amount to 2,500*l. per annum*: out of which 276*l. 10s.* is collected in the ward of Bridge Within, and the rest of the said profits is collected elsewhere within the city of *London*, borough of *Southwark*, and county of *Middlesex*.

That all these receipts are accounted for by different collectors at the above-mentioned office, where the books and accounts of the said company are kept, and all the business of the said company transacted. But *the money so collected is paid* into the hands of a treasurer residing *without the ward*.

That the proprietors of the said company are rated at 2,500*l.* to the land-tax, for their shares only, by virtue of 21 G. 3. c. 3. s. 57. by the commissioners of the city generally; and pay the sum assessed upon them to a particular collector appointed by those commissioners. But that the other property of the said company is rated by the commissioners of the said ward, and the sum assessed thereupon is paid to the collector of the said ward.

That the damages and costs, payable by the city of *London* to the several plaintiffs in respect of several actions brought against the inhabitants of the said city on occasion of the late riots, amount to 28,299*l.* 17*s.* 7*d.*

1783.
ATKINS & al'
versus
DAVIS & al'.

That at a general quarter sessions of the peace holden for the city of *London* the 15th of *October* 1781, the court made the following order: "This court, upon request duly made and according to the directions of the several statutes in such case made and provided, doth hereby assess and tax *rateably and proportionably* all and every the parishes within the said city of *London* and liberties thereof, to and towards an equal contribution to be had and made for the relief of the said several defendants against the said several executions, and for payment thereof; and also for payment of their said several just and necessary expences which they have been at in defending the several actions aforesaid in the proportions following: that is to say (amongst other wards)

"The several parishes in the ward of Bridge Within }
"or so much thereof as is in the same ward." } £760

"And the said court doth hereby order, require and command the respective constables of each of the wards within the said city of *London* above-mentioned, that they or some or one of them do forthwith *rateably and proportionably* tax and assess according to their abilities every inhabitant and dweller in the several parishes within the said respective wards for and towards the payment of the respective sums of money above mentioned, and levy and collect in the several parishes within the said wards the several and respective sums of money above specified, within thirty days from the date hereof: and that they the said constables of the said several and respective wards, and such and every of them, who shall have so levied and collected the several and respective sums of money hereby ordered to be taxed and assessed, levied and collected, upon the inhabitants and dwellers in the several parishes within the several wards aforesaid respectively, do and shall, within ten days after such collection, pay and deliver the same by virtue of this order, and subject to the disposal of this court pursuant to the several statutes aforesaid, into the chamber of the city of *London*, in the joint names of the said *William Plomer* and *James Adair* and *Edward Reynolds* Esquire, deputy clerk of the peace of the said city, taking a receipt or receipts

1783. "receipts from the clerk or officer in the said chamber of *London*,
 "who shall receive the same; which shall be his and their suf-
 Atkins & al' ficient discharge for all and every the monies so to be paid as
 versus
 Davis & al'. "aforesaid."

"Signed *Watkin Lewis, Mayor.*
Wm. Plomer.
Nathaniel Newnham."

That the defendants were constables of the said ward, and did tax and assess the said proprietors at the sum of 145 *l.* 16 *s.* 8 *d.* being at the rate of 1 *s.* 2 *d.* in the pound on 2,500 *l.*, at which they are so rated to the land-tax to the city of *London*: And that the several inhabitants of the said ward were also assessed at the rate of 1 *s.* 2 *d.* in the pound on the several sums at which they are respectively rated to the land-tax collection within the ward; in which last assessment the proprietors were included, being rated for *Mault's* wharf, the secretary's house and fire engine (which are detached property) as follows: *Mault's* wharf 11 *l.* 13 *s.* 4 *d.* secretary's house 1 *l.* 11 *s.* 6 *d.* and fire engine 2 *l.* 6 *s.* 8 *d.*

That the distress in question was made on the property of the proprietors on account of the non-payment of such sum of 145 *l.* 16 *s.* 8 *d.* at which they were assessed on account of their shares.

That the plaintiffs paid all such money as they were assessed at in respect of *Mault's* wharf, the fire engine and secretary's house.

That the proprietors never paid to any ward rate in respect of any other property than *Mault's* wharf, the fire engine and secretary's house; nor paid any rate whatsoever for their shares or property on account of which the distress was taken, but by virtue of the act 21 G. 3. c. 3. §. 57.

That the shares or profits of the *Hampstead* water-works, New River Company, King's Printing-house, Offices of Insurance from fire, Excise-office, and of other companies in the city of *London*, which are rated to the land-tax by the same clause in the act 21 G. 3. with the *London* bridge water-works, were not assessed towards payment of the said sum of 28,299 *l.* 17 *s.* 7 *d.*

The question for the opinion of the court is, Whether the plaintiff is intitled to recover?

This case was twice argued. In *Michaelmas* term last by *Williams* for the plaintiff, and *Law* for the defendant; and in *Hilary* term last by *Davenport* for the plaintiff, and *Law* for the defendant.

It

Tuesday
 Novem. 19.

Tuesday
 Jan. 28.

1783. *ATKINS & al' vers'us DAVIS & al'.* pay their share to its burthens, are not in any sense its *inhabitants*: that in the case of [a] the *Harwich* light-house the sole reason given for that decision by the court, after much deliberation, was, that "the tolls were not locally situated in the parish, and therefore not "rateable there:" that this case was in point: and that not one penny of the sum assessed is even *paid within* the ward, but to a treasurer living *out* of it; and that the only pretence to charge it in the ward is, that the office for transacting business is within it: That eight parts out of nine of the sum assessed arises from the profit of pipes and branches lying within the city of *London*, borough of *Southwark*, county of *Middlesex*, &c. and not locally within this ward; and therefore that the inhabitants of this ward are to that extent over-rated. And suppose a riot in *Southwark* or *Middlesex*, where a large proportion of this property is collected, shall it be said, that this property cannot be made a subject of charge, cannot be made to contribute there? that it should here and should not there, is equally unreasonable and illegal.

3. That the directions of the act of parliament not having been pursued, the respective proportions of the persons charged have not been truly adjusted; and therefore that on that ground also the rate was void. That the 5th section of the stat. 27 *Eliz.* to which the riot act as to this purpose refers, directs, that this assessment shall be made *rateably and proportionably*: that the sum now levied has been rated and collected in the manner, in which the general land-tax is rated and collected upon landed property: that that has been done by the officers of *the city* generally, who have never rated or collected any other than the land-tax: that it is true, that by a particular statute 21 *G. 3.* these shares or profits are subjected to the land-tax; and that in this particular instance and for this purpose these shares are assessed by the same officers, by the officers of *the city*: but that they are not authorised to intermeddle in any other instance or for any other purpose; for that in all others the taxes are rated and collected by the officers of *the ward*: that this newly assumed power has in this instance been exercised by *the city* officers in a manner injurious and unequal: that they have not charged any other inhabitant, any *individual*, for

[a] M. 12 G. 3. 1771. R. v. Martin Rebowe, Esq; Bott. 384.

any part of their personal property; or even, as the case finds, any of the other *public companies*: that this charge therefore cannot be supported as *rateable and proportionable*; and that the whole sum which has been rated upon the real property of the plaintiffs within the ward, upon that property which in the hands of others has not been under charge, has been paid.

1783.
ATKINS & al'
versus
DAVIS & al'.

For the defendants it was insisted, that in this action the first question that had been made by the plaintiffs could only be gone into: that here, where there could be no appeal, the action should have been for an excessive distress: and that, where there was a right to take part, exceeding in the quantum could not make the plaintiffs trespassors.

That, with respect to the first point, the engine was a local visible property, fixed to *London Bridge* within the ward: that it was solely by the operation of the engine, that the water was distributed through the whole extent of the works; and that this engine was wrought altogether within the ward. That, subject to whatever risk or expence it could be fair or reasonable to estimate, a clear gain to a vast amount was as certain, as the flux or re-flux of the tide and the wants of mankind. That in the construction of the word "inhabitant" both in the statute for the repair of decayed bridges by [a] Lord *Coke* and in this very act by [b] Lord *Hale*, he who "hath lands or tenements in his own possession" is such: that these shares are in legal construction a tenement: that the case of [c] the *K. v. the Inhabitants of Cardington* was in point; for there the toll was not paid within the parish, any more than in the case before the court: and that, if this property is not rateable here, it cannot be rated any where.

But that (be this as it may and even tho' the whole without the ward were not) such part at least of this property, as lies within the ward, must be rateable; and that will be sufficient to intitle the defendant to judgment.

It was insisted in reply, That, with respect to that point upon which an answer had been attempted, the authority relied upon had not the smallest application; as in the *Cardington* case the sluice, for the passage through which the demand of toll was made,

a] 22 H. 8. c. 5. 2 Inst. 702.
[b] E. 24 Car. 2. 2 Saund. 427.
[c] E. 17 G. 3. 1777. Cowp. 581.

1783.
 ATKINS & al'
versus
 DAVIS & al'.

lay within the parish which had assessed it: and that, with respect to the difficulty or pretended impossibility of rating this property elsewhere, it was as easy to rate the sums paid for water, in the parishes where they were paid or in which the charge arose, as the rents of houses in the parishes where houses stand. [a]

That, with respect to the objection made to the action, wherever, as here, the jurisdiction, and not the rate and property is exceeded, every one is a trespasser; and that this therefore is an illegal, and not merely an excessive, distress: that the true state of the point was, that the defendants had not taken too much on a right rule; but by a rule different from that which they profess to act by, and by a wrong one.

Buller, J.

But how can you take advantage of this proceeding in an action? 'Tis true, there is no appeal; but if the order is irregular on the face of it, why not remove it by *certiorari*? If the *certiorari* is taken away, are not we bound, are not we precluded from trying the merits of the rate in an action?

Curia advisare vult.

Tuesday,
 February 11.

Lee stated to the court the result of his enquiries respecting the mode of rating the *Yorkshire* navigations: he said, that the *Aire* and *Calder* navigation was rated only at the two extremities, at *Leeds* and *Wakefield*: that they were rated at *Wakefield*, by the name of the proprietors of the navigation, at 1200 *l.* and paid about 120 *l.* *per ann.*; which was a third part of the poor rate for the whole town. That they paid to all other town rates except the street-

[a] The st. 22 & 23 Car. 2. c. 15. (for the maintenance of the clergy of those parishes in the city of *London*, which were burnt in the fire of the year 1666, in which fire the church of *St. Magnus London Bridge*, which stood in the ward in which this question arises, was destroyed) subjects "waterhouses (which waterhouses shall pay in their respective parishes where they stand and not elsewhere) to a proportionable assessment with all other hereditaments in the parish: and the annual land-tax acts, since the year 1709, direct the assessments upon the tolls and duties belonging to the proprietors of the great *Yorkshire* navigation to be made in no other towns, thro' which the navigation runs, than the towns of *Leeds* and *Wakefield*. *R. v. the undertakers of the navigation of the rivers Aire and Calder*. M. 29 G. 3. 1788. 2. Durnford and East, 660.

From hence it should seem, that without such special provision this property must in the idea of the legislature have been assessable in those parishes, in which its several branches and dependencies lay, or thro' which a passage was made. Sed vide the case above cited; tho' nothing was there positively decided, except that the justices are, generally speaking, the proper judges of the quantum; and that, unless the inequality of the rate appears manifestly and necessarily upon the state of the case, the court will not disturb it.

tax,

tax, imposed a few years ago; and that they had paid down 300*l.* 1783.
to be exempted from that charge.

The court having looked into the land-tax act of 1 G. 3. found, ^{ATKINS & al'}
that the *Yorkshire* navigations and the *London* bridge water-works ^{versus} DAVIS & al'.
were assessed by that act; and that the stat. 21 G. 3. was copied
from it. And they now directed an enquiry with respect to their
payment to the land-tax from the earliest period.

It appears from the state of the case of [a] the *K. v. the Under-*
takers of the navigation of the rivers Aire and Calder; that they were
made navigable by stat. 10 & 11 W. 3. c. 19. anno 1699, amend-
ed by stat. 14 G. 3. c. 96.: that the tolls and duties had been rated
to the poor at *Leeds* and *Wakefield* from the year 1713 and at
Wakefield from the year 1759 (and at no other places) for the
whole navigation at 1200*l.* a year: and that in every land-tax act
since the year 1709 (ten years after the act passed for making them na-
vigable) a clause is inserted, that no assessment shall be made upon
them to this tax in any other towns, through which the navi-
gation runs, than the towns of *Leeds* and *Wakefield*.

The court ultimately differing, the Judges now delivered their
opinions *seriatim*, as follows: Wednesday,
June 2.

Buller, J. (after fully stating the case.)

This case has been twice argued and several objections made to
the rate upon this property.

But the general, and I think the only real, question in the cause,
is, Whether this property is rateable in its nature?

The statute of 1 Geo. 1., which is commonly called the *Riot Act*,
directs, "That a rate shall be levied and made upon the inhabit-
ants of the " hundred, city or town in such manner and form and
" by such ways and means as are provided by the statute made in
" the 27 Eliz. c. 13."

The statute of the 27 Eliz. directs, That the justices shall tax
" all towns, parishes, villages and hamlets, towards an equal con-
" tribution; and after such taxation made, the constables &c. shall
" tax according to their abilities every inhabitant and dweller in
" every such town, &c. towards the payment of such assess-
" ment." s. 5.

[a] M. 29 G. 3. 1788: 2. Durnford and East 660.

1783.
 ATKINS & al'
versus
 DAVIS & al'.

Every man's ability to pay depends upon his property.

The only question therefore upon the merits and substantial justice of the case is,

What property are the plaintiffs possessed of?

The answer to this question appears upon the case to be this :

That the wharf is worth 11*l.* 13*s.* 4*d.* *per annum* ; that they have a secretary's house of 1*l.* 11*s.* 6*d.* *per annum* ; a fire engine worth 2*l.* 6*s.* 8*d.* *per annum* ; and they have water-works worth 2,500*l.* *per annum*.

They are rated for all this property in the same proportion as other persons are rated for their property ; and they ought to pay for all this, unless some legal objection or exemption can be made against it.

For not only the express words of the statute, but the true principle of taxation, requires that every man should pay according to his ability, or in other words according to that which he has. And no man, who can be brought within the letter, spirit and meaning of the act, ought to be exempted ; because the exemption of some throws the heavier burthen upon others, whereas all burthens of this sort ought to be as equal as possible.

But, it is objected, that the shares in the water-works are not rateable.

First, because they are subject to great risque and expence, and therefore the value is uncertain.

Secondly, because they have never been rated before.

As to the first objection, it is not made out in point of fact ; for there is not a word stated in the case about any risque or expence.

The property stands confessed to be of the annual value of 2,500*l.* ; and the profits are as certain as the profits of any real property can be. There must necessarily be some expence about such works, but, notwithstanding that, they appear to be of the value of 2,500*l.* *per annum*.

There is a great expence and a great uncertainty as to the clear produce in all cases of land and of houses too : but that was never thought to be an objection against their being rated.

In the case of land there is great expence of plowing, manuring and sowing ; and after all that is done, there is a great uncertainty as to the *quantum* and value of the property.

That

That depends upon the goodness or badness of the season, and in some years there is no crop at all ; as the farmers in many parts of *England* knew by experience in the course of last year, when they were obliged to plow up again the land which was sown. So in the case of houses, it is uncertain what expence is necessary in each particular year. Still the owner is rateable in respect of them.

1783.
ATKINS & al'
versus
DAVIS & al'.

If it is said, the land or house is still of such annual value, notwithstanding the produce is not the same every year ;

The same answer will hold in this case : and upon the facts here stated I must take it, that these works will let for 2,500*l.* *per annum, communibus annis*, notwithstanding the expence upon them.

The case of *Rowlls v. Gell* is not so applicable to the present, as the counsel for the plaintiffs would wish to have it considered ; for there it was expressly stated, the duties were uncertain and varied every year, and yet they were holden to be rateable. In that case it was admitted by the court, that lead-mines were not rateable, and yet the owners of the duties upon those mines were held rateable ; though it was uncertain whether they would receive any profit or not.

If they receive no profit, of course they could not be rated : and therefore the question in all those cases is,

Whether the property does produce any profit or not ?

Till it does yield a profit, it is not rateable : but the moment it does yield a profit, it becomes a fit object of taxation.

The reason why lead-mines are not rateable, is not, because of their risque or uncertainty ; but because the statute of 43 *Eliz.* having mentioned coal-mines only, has been deemed virtually to exclude and except all other mines : and so it was held by the court in the case of the Governor and Company for smelting lead against *Richardson*.

As to the objection of non-usage and that this property ought not to be rated, because it never had been rated ; I was a little surprised to hear the case of *Jones* and *Maunsell* cited as an authority to prove, that usage ought to govern : for no such point was there decided, nor indeed was any thing decided in that case ; for the court, materially differing upon the merits of the case, granted a new trial,

1783.
 ATKINS & al'
versus
 DAVIS & al'.

First. That the facts might be more fully stated, and

Secondly. To give the parties an opportunity of getting a special verdict, and so to carry the matter to the last resort.

Usage in no case can make law against an act of parliament: In many cases it may be material to be enquired into, because the words of a statute may be doubtful, and there may have been a long and uniform usage under the act: there usage may serve to shew what is the true construction of the act, and is considered as a contemporary exposition of it: but then the usage must be general and extend to all cases within the like reason; for usage cannot authorise one construction of the statute in the north and another in the western part of the kingdom.

Usage had no effect in the *King* and *Cardington* or *Rowlls* and *Gell*.

In the *King* and *Cardington*, *Palmer* was seised in fee of the navigation of part of the river *Ouze* and all the tolls of coal, and had the power of erecting sluices and taking tolls there. *Palmer* did not reside in *Cardington*, nor had any persons there to receive the tolls; but they were paid at *Barton* or *Eaton*. This river was navigable, and the tolls were received for above one hundred years; but it was never rated to the poor. The court held *Palmer* rateable in respect to these tolls: yet he had no property either in the soil or in the water: he had merely a power of erecting sluices and taking tolls: the sluice neither did yield or was capable of yielding any natural produce of itself.

A house yields no natural produce of itself; and yet a man is rateable in respect of it.

The plaintiffs have the same property in the trunks and pipes as *Palmer* had in the sluice; and they have also a separate property in the water: they have, and for one hundred years past must have had, as settled valuable property as any man can possess.

It is true, that during that time they never have been rated; but the same circumstance, as I observed, occurred in the *King* and *Cardington*. There it was expressly stated, tolls were paid for one hundred years, but they had never been rated. Upon enquiry it appeared in that case, there were fourteen sluices in the river and only one ever rated, and a great majority of sluices throughout the kingdom were never rated at all; but, notwithstanding that, the rate was holden to be good.

In

In *Rowlls v. Gell*, the duties in question had never been assessed before, though the Duke of *Devonshire* had paid for the like duties in other places. It appears by the additional state of this case, that the property in question has always been rated and paid to the land-tax.

1783.

ATKINS & al'
versus
DAVIS & al'.

It is true they have been rated by name; but, if they had not been expressly mentioned, yet there does not seem to be any doubt, that they would be rateable under the general words of the first of *W. & M.*, which words are: "all other yearly profits and hereditaments of what nature or kind soever."

The manner they are charged to the land-tax is material to be attended to; for they are not taxed at any gross sum, but at 4s. in the pound for their full yearly value, as all lands are: and therefore the legislature have proceeded upon the idea, that these waterworks produce some clear annual value.

The use I make of their being rated to the land-tax is, that it decidedly proves, the property is such as is rateable in its nature; and that it is capable of producing a certain yearly value: but, supposing they had not been rated or rateable to the land-tax, I don't think that would have governed this question: for the land-tax specifies almost every thing by name; and, if these works are not mentioned and therefore not rateable, it by no means follows, that under the general words "every man is to be rated according to his ability," the plaintiffs will not be liable to this rate in respect of this property.

Mr. *Davenport* said, if the water was carried in carts instead of pipes, the pump would not be rated for the value of all the water, carried from thence.

If that is so, it will go a great way towards deciding this question in favour of the plaintiffs. There is no difference with respect to a man's carrying water to a place where it is consumed. Whether it is carried in pipes or in carts is quite immaterial. But I hold in the case put, that the pump would be rateable to the value of all the water carried from thence: for the pump is the permanent visible property; and the quantity of water carried from thence constitutes the produce of the pump.

Suppose a gardener contracts to serve twenty families, and carries all his crop to their different houses, certainly he would be rateable for the whole of his garden, where his garden lies.

U u

In

1783. In the *King* and *Miller* [a] which was cited, *Skillicome* demised
 to *Miller* at a certain place near *Cheltenham* four acres of ground,
 in which was a well of water, called *Cheltenham Spa*, at the rate
 of 100 l. *per annum*. The case stated is, the lands and buildings,
 independent of the well, were worth one hundred pounds annual-
 ly: the rent paid was 80 l.: and the profits arose from the mineral
 water and the sale thereof: and the company, resorting thereto,
 which was very various and uncertain, made up the rest.

ATKINS & al'
 versus
 DAVIS & al'

The court held, the spring was rateable for the produce of it.

That was the only question in the case and upon which the court
 gave any opinion. Nobody doubted about the lands or buildings
 and the value of them: and the value of the well was distinctly
 stated, in order to bring that question before the court; who held
 that the occupier was rateable for the whole one hundred pounds
 a year.

The water, and the profits arising from it, was what was there
 rated. The labour was as requisite to draw and bottle the water
 in that case, as it is to collect it in the present; but that did not
 prevent the rateability. In order to get coals, great labour is ne-
 cessary. Engines and other machines must be used. There is a
 considerable expence attending it, and the profit uncertain; but
 yet coal mines are expressly rateable by the words of the statute:
 which shews the circumstance of labour being or not requisite was
 not the line adopted by the legislature. In the case of the *King*
 against *Miller* you will observe also, the profits were stated to be
 various and uncertain; and so they are in all cases of tolls: but no
 point is better settled, than that tolls are rateable.

That does not rest upon the authority of *Keble* only; but that
 case is recognized and allowed by the court upon all occasions.

Enquiries were made by my Lord's direction in the course of
 some cases pending in this court; and it was found, that the tolls
 at *Wickham* had been rated ever since they were taken: and the
King and *Cardington* and other cases have been founded upon that
 principle.

This is a visible, permanent, property, yielding profit; and as
 such, I think rateable.

[a] Tr. 17 G. 3. 1777. Cowp. 619.

The second objection to it was, that, supposing the property rateable, yet the rate is bad, because the constables have taxed more than they ought to have done; as many pipes, trunks and branches lay out of the ward, and even out of the city.

1783.
ATKINS & al'
versus
DAVIS & al'.

In answer to this, first, I am of opinion, the whole property is rightly rated within the ward.

Secondly. If not so, as some part of this water, with its pipes, &c. is within the ward, it is rateable there: and, as it does not appear upon the face of the rate, that any thing out of the ward is rated, this objection cannot be made in this action.

The objection applies only to the *quantum* of the rate.

First I say, the whole property is rightly rated within the ward. The source of the property is there: the water is collected there by means of the fire-engine and other works fixed there; and there it first becomes the property of the plaintiffs. When the water is once collected by means of the fire-engine and brought within the plaintiff's lands or buildings, it is as much private property as the land itself. Whatever is done afterwards is only for the purpose of vending that property to a greater advantage.

But secondly, supposing the plaintiffs ought not to be rated for the whole produce of the water where the source is, that objection is of no avail in this action.

The plaintiffs are rated for the water-works: they have water-works within this ward, for which they are liable to be rated: therefore the objection goes only to the *quantum* of the rate.

The legislature has vested the power of apportioning the rate in the hands of the justices and constables; and their determination was final and conclusive.

Wherever an appeal is given at the quarter sessions against a rate, the determination of the justices as to the equality of the rate is conclusive: and, where the legislature think fit to vest such a power in any set of persons without appeal, it must also be conclusive.

There is no case, in which it is more necessary that their determination should be conclusive, than the present: for, if it be not so, the inconvenience will be monstrous.

If the justices or constables made a mistake of one shilling in rating only one person too high or too low, the whole rate would be void; and every person rated might maintain an action.

1783.
 ~~~~~  
 ATKINS & al'  
*vers.*  
 DAVIS & al'.

If a justice or a constable exercise a discretion, which the statute has placed in their hands, corruptly, they must be punished criminally for so doing; but still the rate must stand: and you cannot investigate property or equality in an action, unless there is a total want of jurisdiction or the rate is void upon the face of it. What I have just said is an answer made to the last objection by Mr. *Davenport*: namely that the constables have gone by a wrong rule.

Therefore upon the whole, in my opinion there ought to be judgment for the defendants.

*Ashurst, J.*

This certainly is a question of very great general concern: and it does seem to me that in a doubtful case usage ought to have great weight allowed it.

It is expressly found, this is the first attempt to rate property of this kind; though the statute for making the hundred liable is as old as the time of *Elizabeth*.

Therefore the usage in this case does seem to be general, and to have so obtained in every part of the kingdom with respect to such property.

There are a vast number of water-works, particularly in this metropolis. The rule has been held in all: there are a vast number in other parts, in *Gloucestershire* for example; and no instance has been shewn us, in which in any part of the kingdom, works of this kind have ever been rated.

This would at least make one very cautious in establishing a new precedent; and in my opinion it is not enough to say, this is in effect valuable property, and therefore ought to pay.

If we were sitting here in a legislative capacity, that argument would certainly have great weight; but it is our province *jus dicere, non dare*. This must be governed by the same rule as the case of rating to the poor; as the words of the 27 *Eliz.* and 43 *Eliz.* are nearly similar.

And it seems to me this species of property ought not to be rated under those statutes.

It clearly would not be rateable under the words of 43 *Elizabeth*, so neither does it seem to me to fall within the meaning or spirit.

The meaning of the legislature seems to me to be, that the occupier should be rated in respect to things yielding a *certain* profit, and not where the profit is *uncertain* and depends upon constant labour and expence.

There seems to be good policy in exempting such kind of property; as it is an encouragement to adventurers upon hazardous undertakings, by which, if they do succeed, the public are materially benefited: and the moment they have succeeded, if their property was to be charged with a rate of this kind, certainly it would be a great discouragement to such enterprizes.

1783.  
ATKINS & al'  
versus  
DAVIS & al'.

I should be glad to know, what part of this property is rateable?

The first projector of water-works we all know was ruined by it. Suppose he had lived long enough for it to have yielded some profit. Would you forget all the expence he is at before he is reimbursed? Who is to keep the account and strike the ballance?

All these difficulties prove strongly to me, that these uncertain profits were never meant to be rated.

As to the cases upon the subject, the whole tenor of the authorities certainly run strong the other way.

In the *King* and *Vandewall* [a] rents and casual profits of a manor were held not rateable; and yet, as to these things which are uncertain, you may certainly set an average price upon them, taking the average of a given number of years. Upon that average you might strike a ballance and say, rate them at so much, because in ten years they have produced it: but they have been held not rateable.

In the *King v. Richardson* [b] certain parts of the lead ore were liable. In respect of lead-mines the question made was, Whether they were liable to be rated to the poor? It was held they were not.

The determination says, the act mentioned only coal-mines, which is in exclusion of all other mines.

In the *King* and *Rebow* a light house was held not rateable, though a considerable revenue is raised by them, upon this principle, that the profits were uncertain and depended upon the expenditures.

In the *King* and *Shallfleet* [c] a salt-office was held not rateable.

[a] E. 33 G. 2. 1760. 2 Burr. 991. 1 Blackst. 212.  
[b] M. G. 3. 1762. 3 Burr. 1341. 1 Blackst. 389.  
[c] H. 7 G. 3. 1767. 4 Burr. 2011. Bott. 46.

1783.  
 ATKINS & al'  
 vers  
 DAVIS & al'.

In 3 *Kebble* 540. Tolls were held rateable 'tis true: but in the first place I hold that to be a book of no great authority. My brother *Buller* said it was recognized in subsequent cases. At all events it does not appear what the nature of the tolls were. It might be for piccage; that is in the nature of a rent for the land: for this is an acknowledgment in respect of the use made of the land, payable to the owner of the soil. There might be some reason for it, if in the nature of a rent paid for land: but I am not satisfied with an authority, which without some such facts stated does not appear to me to be warranted upon principle.

As to *Rowlls* and *Gell* and the *King* and *Cardington*, I happened to be necessarily absent when those cases were determined; therefore I cannot precisely say upon what reasoning the court went, as the ground of their determination. As to *Rowlls* and *Gell*, the lessee of the mines was rated for lot and cope, which is a certain portion of the ore paid by adventurers to the lessee, without any risque at all run by him. That might possibly be the ground of that determination.

That is not the case here. Here the party has no certain profit. Suppose the pipes burst, or the engine burnt, or any accident of that sort should happen to it?

If the engine is burnt, he might not have any profit at all for twelve months; before which time it might not be reinstated. Therefore certainly the contingent profit of an engine, which depends upon constant labour and expence and if any accident should happen might be rendered totally useless and unproductive for twelve months, is not like the case of *Rowlls* and *Gell*; where the party at all events received part of the ore himself, being at no labour or expence: therefore that might be a ground for that determination.

I have said, that in the case of the *King* and *Cardington* I was not present, I cannot therefore say what arguments were submitted to the court.

But I cannot help saying under my present ideas, I should have been under the necessity of differing, when that judgment was given; there being a great number of precedents the other way.

I am not for extending the law. If it is necessary to alter it, the legislature are to do it, in whose province it more properly falls than in ours. Therefore I am of opinion, there should be judgment for the plaintiffs.

*Willes, J.*



*Willes, J.*

As the case has been fully stated and the authorities commented upon at large by my brother *Buller*, I mean to say little more than that I entirely agree with him in opinion, that these water-works are rateable property.

1783.

ATKIN & al'  
versus  
DAVIS & al'.

Many objections were taken to their rateability.

First. That the profits are uncertain, and there is great risque; nothing of that sort is stated in the case. Indeed property of all sorts is liable to change its value, as houses and lands; but this is never considered as any objection to rateability.

In *Rowlls* and *Gell*, the lot and cope produced 500 *l.* a year some years: many years it varied; but was holden rateable.

Tolls of markets, ports or navigations, and many other species of property are held rateable; though the value is uncertain and changeable.

In this case no objection is stated to the value of the property: which is stated to yield 2,500 *l.* a year, and has paid at the rate of 4 *s.* in the pound land-tax upon this calculation.

This is not like the case of *Jones* and *Maunsel*, where, though the degree of herbage and pannage might be uncertain, it might be rateable; though not judicially determined so. The rule was not denied in *Robson* and *Hyde* [a], that where the subject matter was a valuable, permanent advantage, it was rateable and taxable.

The second objection is, this was never yet taxed; and it is innovation to burthen it by a new duty in the quality of a taxation.

That every man should be rateable according to his ability is looked upon as sound and good policy. Before the 43d of *Eliz.* coal-mines were not rateable, nor for many years afterwards. Many new schemes of improvements, till they became valuable, were omitted to be taxed; and yet taxed afterwards.

A house is rated, as soon as built, without regard to the building: so these things, when they become valuable, are the subject matter of taxation, without considering expences in the original scheme.

The tolls of markets were held rateable, as said in 3 *Keble* 540. in *Charles* the 2d's time; and the same case is reported in *Freem.* 419.

[a] In this term, ante p. 310.

1783. It was there said by the Court, that there was a toll time out of mind, but it was never taxed to the poor, though liable to taxation. So *Freeman* and *Keble* agree. Now it is universally known, they are liable to taxation.

ATKINS & al' <sup>versus</sup>  
DAVIS & al'.

Personal estate is hardly ever taxed; yet in some instances taxation of personal property is allowed.

In *Robson v. Hyde* yesterday, we allowed for the first time a tax of a chapel erected since 1695, which never paid before.

In the *King* and *Cardington* sluices erected for 100 years were determined rateable, though they had never paid before. This has been denied to be law by my brother *Ashburst*; though it was the unanimous opinion of this Court in his absence.

Upon the authority of these determinations, I conceive, that the circumstance of this property not having before been rated, is no objection to its rateability.

The next objection is, that from the nature of the subject itself, these water-works are not rateable. That the property consists in the use of the water, and the mechanical instruments and pipes used in raising and conveying it; but that the proprietors have neither the soil above nor the soil below the pipes; and that the pipes are the property of the trustees of the water-works.

I admit that: but the water upon which the profit arises, is a subject rateable; and was so determined in the *K.* against *Miller*, in the case of the *Cheltenham Spa*. It appears from stat. 5 *W. & M.* c. 10. s. 57. and *Maitland's* history of *London*, p. 160, that these water-works were granted by indenture from the city of *London* in the 25th of *Eliz.* to *Peter Morris* for a term of years.

*Maitland* says, *Peter Morris* was a German, and that these water-works are still the same, as are performed by the present machine in the arches of *London* bridge. He says, that the Lord Mayor and the city of *London* for his encouragement granted *Morris* the use of one of the arches of *London* bridge for the water-works: but, one machine not proving sufficient for raising the water, his successors had more arches granted for erecting more engines, five in number. This grant contains a licence to erect engines, and it contains a grant of two plots of ground, and also a lease for 500 years on a reserved rent, with a grant of three arches of *London* bridge to erect machines.

This is not a property arising from the ingenuity merely of a man's head, or the work of his hands: the above therefore are to me conclusive arguments of rateability.

But

But suppose the fact not to have been as is just stated: suppose there had been no reservation of rent upon a lease, if the determination of the *King* and *Cardington* is right, it would not have varied this case.

1783.  
ATKINS & al'  
versus  
DAVIS & al'

In that case *Palmer* had not the water or soil under the letters patent or act of Parliament, but only a right in the navigation and a power of erecting sluices and so forth.

As I understand this is to be turned into a special verdict, I shall forbear to say more. As all the profits ought to be liable to the burthens of the public, and as they are as certain as the rents of lands, I am of opinion they ought to be rateable: and the consequence of this is, judgment ought to be given for the defendants.

Lord Mansfield.

In this as in the other [a] case, both points being of general and extensive consequence, we have taken great pains to come to a certain and satisfactory conclusion. We have not only conferred, but we have exchanged our doubts in writing; and, there still remaining doubts, it does honour to the Court in my opinion, that we should each give his own opinion.

The case has been very fully and very correctly stated, and therefore I will come to the question directly.

The whole turns upon the nature of the thing, concerning which the question arises. That thing is not land, house or tenement: whatever the plaintiffs have of that sort is separately and particularly rated; the wharf, the secretary's house, and the fire-engine.

It is not stated, that the plaintiffs have any property in the water or soil of the river. They can have no property in the water. The water of the river is common and free as the air, till by labour a part of it may become property. Individuals may so acquire it.

It is not stated, that they have any property in the land, under or over which the wheels, trunks and pipes are laid. It is most probable, though their title is not stated nor any thing concerning it, that they have only a liberty to lay them.

These pipes and trunks cannot by any cultivation be made to yield any produce of themselves: they are the mechanical

[a] Robson v. Hyde & al'. yesterday.

1783. machines, engines, instruments or tools, which the plaintiffs use  
 in performing the labour of raising and conveying the water of  
 the *Thames* to the houses of those who hire and employ them.  
 ATKINS & al' <sup>versus</sup>  
 DAVIS & al'.

Now I take it, that the profits, made merely by the ingenuity of a man's head or the work and labour of his hands with or without mechanical tools, are not a rateable property within the 27th or 43d of *Eliz.*

Any argument from the word "inhabitants", which is in both statutes, and the words "according to their ability" which are expressed in the first statute and necessarily implied in the other, proves too much.

It proves, the more a lawyer or a physician or a porter or a carpenter earns by his labour, the more he is to pay.

But by constant usage (and I know not upon what other ground it is) ability to pay is measured by the local, visible property in the parish: and in this case the plaintiffs may, for any thing that appears, not be inhabitants: they certainly are not rated as inhabitants, but as occupiers of property rateable.

The Court upon the 43d of *Eliz.* has paid great regard to the construction put upon it by usage; and have often directed inquiries into such usage, and in my apprehension very rightly for many reasons. The words of the statute are very loose and very general, and they may be construed into any latitude, even to make all a man has and all a man gets in any way the measure of his ability: for, truly and substantially, it certainly is so; but usage has explained it and narrowed it: and I know nothing of any usage that says, a man shall pay according to his ability in the obvious common sense of the word, *i. e.* all he gets or makes by his efforts or abilities. If this were the rule, every profession would be liable to be taxed for all they get upon an average: their profits may be ascertained upon an average, as much as the bridge water-works. If we don't find it there, I know of nothing but the words of the statute, to prevent taxation being carried to that extent.

Another reason why usage should have great weight is, it is law in daily execution, and every body is interested to the extent of the contribution: and therefore, where a species of property for 200 years has never been looked upon as rateable, it is a strong contemporary exposition of the statute.

The

The business of raising, collecting and conveying water from rivers or springs for the supply of houses upon all occasions existed notoriously in this kingdom before the reign of *Elizabeth*, and have ever since. For it occurs to me, the *Hampstead* water-works depend upon the act of *Henry 8*: so that they must have existed notoriously before the time of *Elizabeth*. And there are a great many other instances of profits, accruing from some of these undertakings, which have been very great, and notoriously have appeared to be great from the price of the shares which they have sold at; and yet to this hour it never has entered into any man's head to think them rateable to the poor. They have been bought and sold ever since the 43d of *Elizabeth*, as not liable to that burthen.

I don't care (indeed I am afraid judicially) to make such an extensive innovation in property, contrary to the sense of mankind for 200 years. The argument of equality is very captivating. The policy of extending every tax is very wise; and I have given way to it in some determinations, which have gone farther upon principles than express precedents warranted: but I recollect none, where a species of profit, never rated before, has been held rateable. I mean those late determinations, that have been alluded to: and I entirely agree, it is no argument to say, that this or that individual thing has never been rated.

That may happen from a variety of accidents; but the question is, Whether the particular species of property throughout the whole kingdom has never been rated? For whatever comes within the general rule of rateable property, is *a thing* rateable, and yet particular *species of things* may not be rateable. There is a great difference, in point of fact as well as in legal consequence, between the circumstance of *particular persons* not having been ever rated though possessed of rateable property, and that of *a species of property* having never before been rated any where throughout the kingdom. For the purpose of exemption it is not enough to say, this particular man has this particular thing belonging to him; if it comes under the general description. Now it appears to us, that this particular species of profit, arising from collecting water from a navigable river and conveying it to the houses of individuals who pay for it, has never been rated.

In *Rowells & Gell* the duties on lot and cope were a rent, that was paid to the owners of the inheritance of the fee for that pro-

X x 2

fit:

1783.

ATKINS & al'  
versus  
DAVIS & al'.

1783. *ATKINS & al' versus DAVIS & al'.* fit: and, though it happened particularly that in that special instance they had never been rated for lot and cope, yet at the next door in the very same county, the Duke of *Devonshire*, who has a lease of many mines under the Crown, had been rated, and consequently was rated: they both lay in *Derbyshire*, in the very same county.

In the *King and Cardington Mr. Palmer*, or they under whom he claimed, had not been rated, but tolls had been rated; and that case of the tolls at *Wickbam*, so long as above 100 years ago, the 22d of *Charles 2*, held them to be so.

And I remember upon the former occasion [*a*] the authority of *Keble* being doubted; and, that which my brother *Willes* has now found of *Freeman* not having then been discovered, I sent to *Wickbam* to know how the fact was. The answer was, they were rated and had been beyond the memory of man; from the 22d of *Charles* the 2d, a great way beyond the memory of man. That supported the report of *Keble*.

It is most certain, that in this very river one sluice was rated, and the navigation tolls all over the kingdom are rated; and lately before us in the case of [*b*] the rivers *Aire* and *Calder* they were rated.

The *Cbeltenbam* spring was rated by the produce of the land: the rate went only by the quantity of rent it paid; so much for the profits of the land. A lime-stone quarry, or a marl pit, or a salt spring is the same: it goes, as the mere value of the land: then the appellant was lessee of the land, which land produced a particular commodity. That raised the value of the land, just like a lime-stone quarry, or a marl pit, or a salt spring, that adds to the value.

The determination of yesterday has been mentioned as an authority, that usage does not wholly guide. Now that determination went upon the most general, most universal principles, that can exist; *i.e.* that a man, the lessee of a house which pays a rent and yields a profit, is rateable to the poor. That was the determination: tho' set apart for the performance of divine worship, the Court held, the use it was applied to, being for the purpose

---

[*a*] In the case of *Jones v. Maunsell*.

[*b*] E. 23 G. 3. 1783. The company of Proprietors of the navigation of the rivers *Aire* and *Calder*. It was a question, whether warehouses (which the owners of lands adjoining to the navigation might build and let) were rateable to the poor.

of profit, made it rateable. The usage was not at all material: it was there nothing to the purpose. It was no chapel in the proper sense of the word; but a room where people were permitted to come and say prayers and hear sermons; and not a chapel of ease or a church. This was the only use the lessee applied it to; and therefore it was held rateable upon the most general principles in the world: and there is no case of any exemption whatever founded upon such an usage: where the lessee makes a profit of the pews of a chapel, such a use will subject him to charge; and here no usage shall exempt him.

It may be just, when these undertakings had taken fast root, that they should be distinguished from the profits of labour in general; but I don't foresee, and I have turned it very much and with great anxiety in my mind, I am not able to foresee, where the reasoning of the words "inhabitants", "and according to their ability" may carry us. I protest, I don't know where to draw the line: for these are the only words of the statute; and there is nothing in the statute to narrow or qualify them. It will go to every thing that makes a man rich.

Every land-tax act since the revolution (and here is a defect in the case, for the case only mentioned the last land-tax act, but that has been admitted since) every land-tax act since the revolution has subjected many of these water-works to raise, collect and convey water, severally and specifically by name, to the land-tax in proportion to their profits.

The legislature would not trust to any general words to take them in; but they have (thinking it just in the particular cases I have mentioned before) they have by special description said, how they should be rated according to the average medium of their profits.

It don't follow, that therefore, and because they are so taxed to the land-tax, they are liable within the 27th or 43d of *Elizabeth*.

The land-tax act subjects offices and salaries; yet an officer is not liable, in respect of his office or salary, to be rated to the poor of the parish where he lives; as was determined in the case, alluded to by my brother *Ashburst*, of the Salt-office: he is not rated for his salary or the price of his labour. Nay, on the contrary it is very strong, that ever since the revolution, which is now very near 100 years, though the New River, the Bridge Water-works, the *Hampstead* water-works, and other works were so notoriously

1783.

ATKINS & al'  
versus  
DAVIS & al'.

1783. <sup>ATKINS & al' *versus* DAVIS & al'.</sup> notoriously pointed out in the land-tax act, though the profits were ascertained to a very large amount, and tho' the poors rates have long risen to a grievous height, no man ever imagined that they could be rated to the poor.

Water-works are numerous all over the kingdom. This appears from the particular mention of them in the land-tax act; and all that I am going to mention are taken from the land-tax act. There are water-works in *Southwark*, *Westminster*, *Colchester*, in *New Windsor*, in *Exeter*, in *Sbrewsbury*, (and perhaps an hundred more, but I take these as mentioned in the land-tax act) and yet plaintiffs have not been able in a single instance throughout the whole kingdom to shew, that this species of property was ever rated. If in other parts of the kingdom this had been rated, though omitted in *London*, the usage would not have had that weight it has with me; because under this state of facts we are now introducing as a subject of charge a species of property, notorious ever since the reign of *Elizabeth* and before, and which by the sense of all mankind has been considered as not liable.

The subject matter here rated is certainly the profits and gain made by labour, and not the engine, or the water, or the arch of the bridge; for the leave to make use of an arch of the bridge don't give any property in the arch of the bridge; and the engine, which raises the water, is rated separately.

The plaintiffs then have a licence to do what? To fix a fire-engine, which is separately rated: for what is done is done by labour, assisted with trunks and pipes to raise the water, and to carry it to the houses of people who employ them.

If then the rule contended for should be established by the judgment of this Court, I really do not know where to stop, and where to draw the line. And I am the more alarmed, because I see every new case not only determines itself, but consequences are drawn from it and applied to others; although Lord *Bacon* says, *consequentia consequentiæ* is no good argument. New cases furnish other new cases going still farther, and arguments to support new attempts. I protest therefore I cannot see where to draw a line, that is founded in good sense, or where to stop, unless we stop here. If the meaning of the legislature is this, that every man should be taxed according to his ability, let that be as it may, that is a strong sense and a clear principle: but it would



make a great innovation: I protest, I don't know where it would go. 1783.

I allow (and as I have said more than once, I cannot speak it too often) I allow the principle of justice and the principle of policy; that taxes should be equal and extensive. But there is no end of the use that may be made or the consequences that may be drawn from supposing, that the annual profits of labour (with or without tools) ascertained upon the average, or those of ingenious mechanical inventions, are property rateable. What should the line be? If any one of the machines has any fixture upon land or upon the soil, I don't know where to draw the line.

ATKINS & al'  
versus  
DAVIS & al'.

I am therefore for adhering in judicature to the unanimous sense of mankind, ever since the statutes were made.

I say nothing of the question, whether these profits, if rateable, should be all rated in Bridge Ward, or in the several parishes where they arise and are paid; because in this action, as it is clearly explained by my brother *Buller*, the quantity of assessment is not material.

The consequence of this is, you must by consent turn your special case into a special verdict; and in that special verdict, if there are any omissions in the case, according to truth they may be supplied; but you must turn it into a special verdict: and, if you vary the case by your special verdict, the Court may be applied to: if you don't vary it in the opinion of the counsel upon both sides, you may take judgment either way. It is only with a view to bring in a writ of error.

The special case having been by consent turned into a special verdict, and the parties having also agreed, for the purpose of carrying the cause in course of appeal to the Court of Exchequer Chamber, that judgment should be entered for the plaintiffs; the special verdict was twice argued before that Court at Serjeants Inn: in *Trinity* term 1784, by *Law* for the plaintiffs, and *Williams* for the defendants, in error; and in *Michaelmas* term following by *Wilson, J.* for the plaintiffs, and Sir *Thomas Davenport* for the defendants, in error.

Tuesday -  
June 15.  
Monday  
Novem. 22.

*Law* for the plaintiffs in error insisted; that this property was a legal subject of taxation, for the maintenance of the poor: that the true sense of the statutes made for their relief must be the rule of

1783.  
 ~~~~~  
 ATKINS & al'
versus
 DAVIS & al'.

of construction in the present instance : that they clearly meant to embrace every possible property : that they were in their nature prospective : and that, whatever the mode of acquiring or whatever the denomination of the thing acquired, if only it constituted *ability* in the proprietor, it subjected such person to the charge.

That it had been urged as a ground of exemption, that this property was exposed to great hazard and severe losses ; but that it was not pretended, that there was not *ability*, ample and abundant, beyond any possible calculation of loss : that wherever such contingency arose, an allowance ought and would be made for it ; but that here, in respect to *quantum* in this point of view, not a syllable of argument or evidence had been used : that the profits were *certain* and not *casual* or in the nature of any of the cases cited upon that head : that it was true, they were not certain in their amount, neither was the lot and cope in the case of *Rowlls v. Gell* ; and yet this property was holden rateable : that not only the tolls of markets, but of the sluices of navigable canals, a property in every view similar to the present, have been holden [a] to be a proper subject of charge : that if, in the case of a discovery, ingenious in its principles, difficult and hazardous in its execution, and also of great public utility, it be asked, *at what period* it might be just in the public in the first instance, to insist upon this charge ? I answer that, after this property has by the legislature itself in the land-tax acts been subjected to this charge for near a century, and the proprietors have during the whole of that time submitted without a murmur to the payment, it does not in such a case as this seem very reasonable to impeach the exercise of discretion in the plaintiffs and to bring forward under such circumstances the idea of too early a day. But that, at any rate if the subject matter here is chargeable, a court of law cannot withhold its sanction to the charge. That an argument, which appears to have had most weight with one of the Judges was ; that there did not appear, if this charge could be supported, to be any discernable limit of taxable objects : that every species of personalty would become subject, every article that a man has ; that it would go to his profession and trade, to every thing that makes him rich : that, even

[a] Cowp. 581.

in nature
or what
it con-
to the

that this
but that
ad abun-
ever such
le for it;
w, ne: s
e press
the cas
ertain u
of Rem
not only
s, a pro-
en [a] &
discovery,
xecution,
it might
is charge
e itself is
a century.
submitted
a case is
cretion is
tances the
a matte
ction to
ad mod
appear,
imit of
ccome
pro-
ven

if this were so, it was the legislature only, that could apply the remedy, it could not prevent the Court from pronouncing the law: but that, if the argument were placed in its true point of view, there was no analogy between this representation of things and the state of the present question: that, in the usual mode of acquiring property in professions or trades by the hand or the head, there was nothing that continued visible and local; nothing fixed, as the fire-engine, pipes and trunks; nothing, out of which the profit arose, perpetually and almost inseparably attached and annexed to the soil: and that to subjects such as these, the doctrine of usage, which has been so much insisted upon, has never been applied.

17
ATKIN
vs
DAVE

That the whole was properly assessed in the ward, in which the whole was paid, and the business done: that it was so regulated in modern practice at *Fulham* and *Putney* bridge: that now the tolls are taken in both parishes, they are rated alike at 700*l.* each, in each parish; and that while nothing was collected at the *Putney* side of the bridge, the whole was assessed at *Fulham*: [a]

That most of the great and permanent objects of taxation are mentioned in the stat. 43 *Eliz.*: that every thing valuable was meant to be subjected: and that by analogy to the decisions in the case of mills and sluices the present must be adjudged to be rateable, as a visible local property within the ward. [b.]

Williams for the defendants in error argued, as follows:

It is a question, that of late years has been frequently agitated, and has not yet received a final decision, whether personal property in general, and that even where the amount is clear and certain, be rateable or not? [c] In many instances it has been adjudged not to be rateable [d]. In some it is true it has been held rateable; but then it has been adjudged to be so even in these cases upon the ground of *usage* only. [e.]

[a] In a note on the case of *Jones v. Maunsell*. M. 20 G. 3. 1779. Dougl. fo. 292.

[b] I have not thought it necessary to state a second time the authorities cited from Lord Coke, Saunders, &c.

[c] *Rex v. Inhabitants of Ringwood*. Tr. 15 G. 3. 1775. Cowp. 326. *Rex v. Inhabitants of Witney*. E. 10 G. 3. 1770. 5 Burr. 2634. 2 Blackst. 709. Bott. 34. *King v. the Guardians of the poor of the city of Canterbury*. H. 9 G. 3. 1769. 4 Burr. 2293. *King v. Churchwardens of Andover*. H. 17 G. 3. 1777. Cow. 564.

[d] *King v. Rebowe*. M. 13 G. 3. 1772. Bott. 384. Cowp. fo. 533. K. B. *King v. Vandewall*. E. 33 G. 3. 1760. 2 Burr. 991. 1 Blackst. 212.

[e] *Rex v. Cardington*. E. 17 G. 3. 1777. Cowp. 581. *Rex v. Francis Hill*. T. 17 G. 3. 1777. Cowp. 613.

1783.
 ATKINS & al'
versus
 DAVIS & al'.

The present is a particular case, and differs from any that has been hitherto discussed upon the general question; the question now submitted to the consideration of the Court being, Whether a particular species of property, in no single instance by any usage ever yet rated, being also profits, and profits of a very hazardous adventure, in the first instance requiring an immense capital and afterwards attended with constant risque and expence, is in the possession of the defendants in error, who are not inhabitants, a property rateable within the meaning of the 27th and 43d of *Elizabeth*.

First then I shall submit to your Lordships, that this property, having in no instance by any usage ever yet been rated, ought not in point of law to be considered as rateable under the statute of Queen *Elizabeth*.

From the word "inhabitants" which is used in both statutes, and the words "according to their abilities" which are expressed in the 27th and necessarily implied in the 43d of *Elizabeth*, it has been contended and strongly urged, [a] that a man is rateable to the extent of all his estate, both *personal* as well as real. However from the time of the making of those statutes until the present, whenever the general question has been discussed, whether personal property, without any modification of it, be rateable or not, the Court have generally intimated, that if the plea of exemption could in any respect be supported, the principal and leading ground was, the great inconvenience and confusion that would necessarily follow an adjudication, that subjected it to charge. And it has been urged on this side of the question, that had not this argument prevailed, it would be impossible to say, where the reasoning from the words "inhabitants and according to their abilities" would end: that they are the only words used in the statutes, and that there is nothing to narrow or qualify their loose and general sense; but by usage they have been confined to a certain and determinate sense, and that sense has been uniformly adopted by the Court of *K. B.* in their determinations: that the rule is, that if personal property has been *usually* rated in a parish, the Court upon the fact of usage only [b] support such rate; and

[a] King v. Churchwardens of Andover. King v. Francis Hill.

[b] King v. Francis Hill. King v. Rodd. H. 22 G. 3. 1782. Ante 147.

if the usage has been *not* to rate such property, there the rate is not supported. This was determined in a modern case, that of the *King* and *Francis Hill*; and has since been considered as so thoroughly established, that in the case of the *King v. Rodd* H. 22 G. 3. (the usage as to not rating personal property being stated on the authority of the case of *King v. Hill*) the point was yielded at the bar without argument. And in all the numerous cases on these statutes inquiries are always directed to be made about the *usage*; which is considered as the best expositor of their true meaning and construction.

With respect to this case of the *London* Bridge water-works, the verdict finds that they had never been rated before; and, as this species of property is to be found all over the kingdom, the Court of *K. B.*, according to their constant course of proceeding as I have before stated, after the first argument directed enquiries to be made among the other water-work proprietors, whether any of them had been rated before: the Court at the same time declaring that if any of the other water-works in the country had been rated, though omitted in *London*, they should hold these also liable; because the usage in these cases must be uniform. The result of this enquiry was, that no single instance could be produced throughout the whole kingdom of any one of them having been ever rated; though the *Hampstead* water-works had existed ever since the reign of *Henry* the 8th, and many of the others also at a very early period; and those which are at present the subject of your Lordships consideration for upwards of 200 years. The usage here then has been long, uniform and universal over the same species of property, and this circumstance will doubtless have the same weight with your Lordships in this case, as it has uniformly hitherto had in the construction of doubtful statutes in other cases; especially as this case is not as those other cases were, a question whether *personal property in general* is rateable; but whether a particular species of property, consisting of profits, and those profits of a very hazardous adventure, in the first instance requiring an immense capital and afterwards attended with constant risk and expence, be rateable?

And I farther submit to your Lordships, that, if in any case whatsoever uninterrupted usage ought to be considered as a contemporaneous exposition, it ought more peculiarly to be so in the

Y y 2

case

1783.

ATKINS & al'
versus
DAVIS & al'.

1783.
 Atkins & al'
versus
 Davis & al'.

case of that property, which has always been of such immense, ostensible value, and which uniformly lay in the neighbourhood of great towns and cities, the residence of active minds, from its value and from the grievous magnitude of the poor rate, deeply interested in the discussion, and who must therefore have been presumed to have been fully satisfied that such property could not be liable, or they would not have failed to have brought that subject under discussion: especially as at the time of the creation of this property, which was near the time of the 43d of *Elizabeth*, cases are reported in the books to have been adjudged upon the rateability of different species of property, much less an object in point of value; and therefore so much less likely to produce a struggle.

In particularizing the authorities which I have alluded to on this head of usage, I shall take leave to state the principle as laid down by my Lord *Vaughan*. In his report [a] in delivering the opinion of the Court of *C. P.* he says, "That, where the penning of a statute is dubious, *long usage* is a just medium to expound it by: for *jus et norma loquendi* is governed by usage; and the meaning of things spoken or written must be, as it hath constantly been received to be, by common acceptance." The modern authorities agreeable to this principle are, *The King* and *Vandewall* [b] where Lord *Mansfield* in delivering the resolution of the whole Court says, "So far as appears to the Court such rents and profits, (which were quit-rents and not attended with any risk) had never been attempted to be rated before, and there is no colour for the attempt now, after more than a century and a half from the making of the act upon which it is grounded." It is hardly necessary to observe to your Lordships, that here no attempt has before been made, and that here more than two centuries have elapsed. In the case of the Governor and Company for smelting down lead against *Richardson* [c], inquiries were directed to be made among all the other lead-mines to know whether they were rateable. In the *King v. Gardner* [d], it is laid down, that the *usage* under the statute of the 43d of *Eliz.* is very

[a] *Sheppard v. Gosnold & al'*. H. 23 & 24 Car. 2. fo. 169.

[b] 2 Burr. 991.

[c] M. 3 G. 3. 1762. 3 Burr. 1341. 1 Blackst. 389.

[d] Tr. 14 G. 3. 1774. Cowp. 83.

material;

material; for great care must be taken to get at certainty in determinations, and to avoid overturning settled practice. If corporations have been *usually rated* all over the kingdom above a century, there will be little inconvenience in adopting *the usage*. In the *King v. Churchwardens of Andover* [a] it was laid down by the Court, "That it would be material to state what has been the *custom of rating*. If the *usage* should be to take in stock in trade, "there would be very good right to support it."

1783.

ATKINS & al'
versus
DAVIS & al'.

In the *K. v. the Inhabitants of Cardington* [b], the Court after the first argument ordered the case to stand over to another term, *that inquiries might be made as to the custom of rating that species of property in other places*.

In the *King v. Francis Hill* it was adjudged, "That where it "had been the *usage* in a parish to rate persons to the poor for "their stock in trade within the parish; such persons are liable "under the statute of 43 Eliz." In *Jones v. Maunsel* [c] on the rateability of herbage and pannage, the Court after the argument directed inquiries to be made on both sides in order to discover, whether there was any instance of such property being rated in any part of the kingdom. I have already troubled your Lordships with the *King v. Rodd*, which upon the authority of the above case of the *King v. Francis Hill* was not thought maintainable at the bar: and, in giving his opinion in this case, Mr. Justice Buller, though he thought this property rateable, admitted, "That *usage* in many cases may be material to be inquired "into, when the words of a statute are doubtful and there has "been a *long and uniform usage* under the act; for it serves to "shew what is the true construction of the act, and is considered as a contemporary exposition of it: but then it must "be *general* and extend to *all cases* within the like reason." The case before the Court falls precisely within this rule; for the inquiries directed have found the universality of this usage throughout the realm.

A farther argument, that this principle of law which I have been now labouring, is well founded, seems to arise from the provisions of the legislature itself in *pari materia*. This *usage* of

[a] H. 17 G. 3. 1777. Cowp. 565.

[b] E. 17 G. 3. 1777. Cowp. 581.

[c] Dougl. 289. M. 20 G. 3. 1779.

1783.
 ~~~~~  
 ATKINS & al'  
 vers'us  
 DAVIS & al'.

rating personal property, referred to in the highway acts, and the assessments imposed by them for the purposes of repairing and making highways and bridges, are confined in these words, "*such as has been usually rated only.*"

By the statute 22 Car. 2. c. 12. s. 10. for the repairing of highways and bridges, it is enacted, "That one or more assessment or assessments upon all and every the inhabitants, owners and occupiers of lands, houses, tenements and hereditaments, *or any personal property usually rateable to the poor* within such parish shall be levied, &c."

By stat. 2 W. & M. c. 18. for paving and cleansing the streets in the cities of London and Westminster, it is enacted, "That for the better mending of the highways, one or more assessment or assessments upon all and every the inhabitants, owners and occupiers of lands, houses, tenements and hereditaments, *or any personal property usually rateable to the poor*, within any of the said parishes shall be levied, &c."

By the stat. 3 W. & M. c. 12. for the repairing and amending highways, it is enacted by sect. 17. & 18. "That no assessment for the purposes therein mentioned should exceed the rate of 6d. in the pound of the yearly value of lands, houses, tenements; nor of 6d. in 20l. of *personal estate, usually rateable to the poor.*"

This is a declaration by the whole legislature, that assessments for purposes so beneficial and of such general public good as the making of bridges and repairing of highways shall be confined to *personal property usually rateable only*: And I conceive I am well warranted in contending, that it serves as a legislative exposition of the statutes of Elizabeth.

The act of Parliament out of which this question arises, and which was made for the purpose of throwing the burden and expence of all damages incurred by riots upon the inhabitants of the hundred, who under the impressions of a sudden panic have not properly exerted themselves in prevention of such outrages, ought not by construction to be made to speak in stronger terms than the legislature has thought fit to express in the act of 43 Eliz.; which is not in any respect a penal act, but framed merely with a view to civil regulations. If then upon *those statutes* it was questionable, to what extent personal property was liable, this must be received as an exposition of the legislature that no personal property, even



in the case of the poor laws, could be subject to this taxation; unless under the usage and the force of custom. Will then your Lordships in this case extend the line laid down by your Lordships predecessors in the several authorities, and by the legislature in the several statutes, I have cited? and against *a long and uniform usage* from the 27th of *Eliz.*, and against the sense of all mankind from that period to the present, now for the first time decide, that this is a species of property rateable?

1783.  
ATKINS & al'  
*versus*  
DAVIS & al'.

2. I shall in the next place submit, that this, being a species of property, consisting of *profits*, is, as such, not rateable.

The defendants in error are not rated in this case for the fire-engine, which raises the water to the pipes and trunks: for the verdict finds that to be separately rated in the same proportion with the property of the other inhabitants of the ward. Then the pipes and trunks which carry the water must be the property, that is meant to be rated. But this cannot be supported, because the pipes and trunks cannot by any cultivation be made to yield any profit of themselves. Neither can the water be made in any way the subject of this rate. The verdict does not find, that they have any property in the water, nor could it be so found: while it flows in the stream, till they have raised it and so appropriated it, it could not be the subject of property. The subject rated then can have been no other than *the profits* made by the labour and expence of conducting water from the *Thames* by the help of a fire-engine through trunks and pipes into the houses of those who hire and employ the defendants; for the fire-engine which raises the water from the *Thames* is, as I have stated, out of the question, because separately rated. Suppose they carried this water in *carts* or *buckets* instead of pipes, would they in that case be rateable? If they would be liable, what would you make the subject of the rate? Is it the *profits* or the *pump* from whence they draw the water? If there is no pretence to charge the profits, it can only be for the pump? and if this is liable, Why is the brewer's dray or the banker's shop exempted? The profits of *labour* are clearly not a rateable property within the statutes. If they were, under what authority, upon what principle of reasoning or distinction, are the profits of a *trade or profession* exempted?

3. As another ground of exemption I shall submit, that these are not merely the profits of labour, but of an *adventure*; which, in addition to the hazard of the capital in the first instance, is also liable

1783. liable to great subsequent risque and expence. The very nature of this property, consisting of a fire-engine, of wheels, pipes, trunks and branches, being a machine in its frame, vast, nice and complicated, and its pipes and branches extending a great way into various parts of the city of *London*, the borough of *Southwark*, and the county of *Middlesex*, demonstrates that it must be subject not only to great *general* risque, but, from its situation in a large navigable river, subject also to that variety of accidents, which the ebbing and flowing of tides, floods, frost, the occasional breaking of ships and boats from their moorings, and in consequence striking against the works, necessarily must produce. Besides the general expenditure in the repairs of the wheels and trunks, the accident of the bursting of pipes or the burning of the engine may absorb the profits of a whole year. Even a small stick, getting under the boom laid across the arch, may, and in fact has produced an injury to the company of more than 2000*l*. I am aware, that no particular fact, unless made out in proof at the trial and inserted in the special verdict, can be insisted upon as having actually happened. However, though the particular circumstances of the very accident that is pointed out are not found by the jury, yet the Court will suggest to themselves the variety of casualties, inseparably incident to a property described as this is.

ATKINS & al'  
versus  
DAVIS & al'.

The law, my Lords, upon the wisest principles of policy holds out every possible encouragement to adventurers, engaged in expensive and hazardous undertakings; which, in the event of success, may become a public benefit. Such checks, as the argument on the other side must introduce, would damp the spirit and annihilate the plans of the most sanguine projector. In point of fact, a similar attempt, the supply of this metropolis with water by means of the New River, as is well known, ruined the first adventurer. But, suppose a project of this magnitude compleated, at what point of time would you begin to rate it? And in what manner is it to be done? As soon as ruin and bankruptcy stare him no longer in the face, would you begin *immediately*, and forget all the expences, labour, risque, and contrivance in the invention and completion? Or, independent of what might be allowed for the risque and merit of invention, would you wait until the adventurer is reimbursed? If so? Who is to keep the account and strike the ballance? The difficulties that have been suggested, would of themselves be enough to deter, even if the obvious impolicy, injury and unjust

tic

tice did not prohibit the taxation of a property so circum-  
stanced.


That these are grounds of exemption, seems to be as well settled upon the authorities, as it is clear upon principle. In the *K. v. Rebowe* [a] it was adjudged, that a light-house was not rateable; though it was expressly stated in that case, that the duties paid to Mr. *Rebowe* by the ships which passed, or went into *Harwich* harbour amounted yearly to 1400*l.*: and they were holden not rateable upon this principle; that the profits were uncertain and depended upon the expenditures. In *Rowlls* and *Gell* [b] it was stated, that the duties of lot and cope, which were rated in that case, were paid and received by the plaintiff *without any risque or expence in working the mines*: and Lord *Mansfield* expressly stated, that that case turned upon a circumstance, the very opposite of which was one of the leading features of this; *i e.* that there was no possible risque.

I will trouble your Lordships with only one other authority on this head of argument; and it appears to me that it is throughout, or at least in all its material parts, very strongly applicable to the present. It is the case of [c] the *K. v. the Inhabitants of Shalfleet*. The question there was, Whether an officer of the Salt-office was liable to be rated to the *poor* in respect of his *salary*? The case stated, that *J. S.*, the appellant, inhabited a tenement in *Shalfleet*, and was an officer appointed by his Majesty's commissioners of the Salt-office for the purpose of superintending the salt works carried on in the parish aforesaid; for which he received a salary of 40*l. per annum* by monthly payments from the government; and was removeable from the said office by the commissioners at pleasure. That the salt works, which he superintended, have been and are assessed both to the land-tax and to the poor; and have constantly paid such assessments. That the officers appointed by the said commissioners for the purposes of superintending the salt works have been assessed to and have paid the *land-tax*; but it does not appear to this Court (the Court of Sessions) that such officers have been before this time rated to the *poor*. That the said *J. S.* is

1783.

ATKINS & al<sup>r</sup>  
versus  
DAVIS & al<sup>l</sup>.

[a] M. 12 G. 3. 1771. Bott. 384.  
[b] E. 16 G. 3. 1776. Cowp. 451.  
[c] H. 7 G. 3. 1767. 4 Burr. 2011. Sherrington's case.

1783.  rated to the poor at the sum of 3*l*. 18*s*. upon the account of his said salary only. The sessions held the appellant not rateable.

ATKINS & al' It does not occur to me in what manner this case can be distinguished from that before the Court. There the officer's salary *versus* had been, in the same manner as the water-works here, assessed to DAVIS & al'. the land-tax. There the officer had never paid to the poor rates: and in like manner the verdict in this case finds, that the defendants in error never paid any ward rate whatever. There it was also strongly urged, that, as these salaries had been thought to be fit objects of taxation to *the land-tax*, there was much stronger reason why they should be so to the poor; and that as they were expressly named in the land-tax act, it shewed they were fit objects of taxation in general, yet the Court of *K. B.* were unanimously of opinion "that that was not such a species of property, as "could be rated to the relief of the poor, as personal estate within "the parish."

I shall submit one other ground, upon which I conceive the defendants are intitled to this exemption. They are not inhabitants. The verdict does not find them to be so. They do not live in the ward. They pay no ward rates. They have, it is true, some local property within it; which may make them liable as inhabitants to the extent of that property, but not beyond: and for this the jury find they have been already separately rated, and have paid in common with the other inhabitants of the ward. A great part of their works, such as the wheels, pipes and other instruments used for the purpose of raising and conveying the water, is situated on the *Southwark* side of the river. The pipes and trunks branch and extend to various other parts, into *London*, *Southwark* and *Middlesex*. The point then, to which I would wish to direct your Lordships' attention is, that they certainly are not rated in this case as *inhabitants*, but as *occupiers* of property rateable: that the defendants would clearly not be rateable under the *words* of the 43d of *Eliz.*, which mentions only occupiers of lands, houses, tithes impropriate, appropriation of tithes, coal-mines or saleable underwoods; nor would they be rateable within the *spirit* of that statute, which meant, that *occupiers* should be rated only in respect of things there visible, and such also as yielded a certain profit. That therefore, being altogether without the *aim and equity* of the act, they are not in point of fact charged in that character, which alone can make them subject within the *letter* of it.

I trust

I trust therefore that your Lordships will not, contrary to all experience and practice, without any legal precedent, and by construction only, upon an act of Parliament which has existed in full force for more than two centuries, this day impose a burthen and create a charge; the mischievous consequences of which, as far as it may affect either the personal property of individuals or the interests of the public in that species of useful discovery, which will not then be hazarded, cannot by any sagacity be possibly foreseen.

*Uterius consilium.*

1783.

ATKINS & al'  
*versus*  
DAVIS & al'.

Wilson, J. for the plaintiffs in error stated, that the question, whether the company with respect to this property were rateable towards repairing the damages sustained by reason of the late riots, depended upon the stat. 27 *Eliz.*; to which stat. 1 *G. 1.* commonly called the *Riot Act*, refers? that by that statute, "inhabitants" and dwellers are to be taxed *according to their ability*." He then argued, that one would think, that upon this statute the only question that could be made must be, Whether this property, which yields the company 2500 *l.* a year, adds any thing to their ability? That it was objected, that from their contrivance, expence and hazard, these works ought not, and from their public utility could not be intended, to be rateable: but that if this were so, would not the legislature have inserted a clause of exemption in favour of all works of ingenious enterprize? that the sense and policy was on the contrary to make the burthen as general and extensive as possible.

Monday.  
Nov. 22.

That it has been insisted, that the statutes 27 & 43 *Eliz.* are co-extensive: that he should feel no difficulty in maintaining, that this was a property rateable under stat. 43 *Eliz.*; but that he was not bound to argue the point in that manner. That this was a tax imposed by stat. 1 *G. 1.*: that, if it had ever been in the intention of the legislature, that it should receive its interpretation or be in any way explained by 43 *Eliz.*, would they not have referred to that statute rather than to that of 27 *Eliz.*? that the first of these acts must have been known and familiar to every member of the House of Commons; but the other only to a very few: and that it would by no means follow, that, even if this property was not rateable under the 43<sup>d</sup>, it would therefore be intitled to exemption under the 27<sup>th</sup> of *Eliz.*

Z z 2

That

1783.  
 ~~~~~  
 ATKINS & al'
 versus
 DAVIS & al'.

That it had also been objected, that these profits were *casual*: that if by casual is meant that they are not *annual*, the fact is contradicted by the verdict: that, if by casual they meant *uncertain and liable to risque*, this is the case with respect to all property in the kingdom: that in the first sense of the word therefore it was not true; and in the other was nothing to the purpose: that the case of the *K. v. Vandewall*, which had been cited to shew that casual profits were not liable, did not apply: that quit-rents, which are services, are not exempt because they are casual: but that the true principle of that decision was, that being profits issuing out of lands, the lands had paid once; and if afterwards the quit-rents were charged, would be doubly taxed, would to that extent be made to pay again.

That this has been compared to the case of the profits of *labour and skill*: that these are not rateable; but that such is not the present case: that it is true, that besides the *labour* there must be found something local and visible to be made the subject of charge: that here the *water* is such: that a property has been acquired in it by occupancy: that, when by their mechanism and labour they have possessed themselves of it and the whole has a local and visible form and becomes of considerable value, it is that value that is rateable [a]. That, if that property were not rateable, the value of which is improved by labour, the poor would go almost without a provision: that the labour and skill of a gardener will add no less than fifty times to the value of the natural produce of the earth; and that no man had ever questioned, that this property in its improved state was a fit object of taxation.

That this is a property, which in point of certainty and *permanency* stands upon as firm a basis as the capital or the foundations of the empire: that the tolls of the sluices of navigable rivers are a property of a class and character very similar to the present: that in the case of the *K. v. Cardington* the tolls of these sluices, which for a century and half after the grant of the navigation had never been rated, were, when they became a property of great value, assessed to the poor; and that assessment was adjudged legal: that this also is a

[a] See the opinion of Buller, J. in the case of the *K. v. Hogg*. E. 27 G. 3. 1787. ante, fo. 274, 75.

species of property rateable to the poor ; but that whether it be so or not, it is clearly chargeable under the 27th of *Eliz.* ; and that the plaintiffs under the authorities in *Saunders* and 2 *Inst.* were unquestionably inhabitants. 1783.
ATKINS & al'
versus
DAVIS & al'.

Sir *Thomas Davenport* for the defendants in error contended ; that as the statutes 1 G. 1. and 27 *Eliz.* had created the rateability in the present instance and no industry could furnish any case as a guide, the Court were naturally and necessarily led to the 43d of *Eliz.* for the solution of this difficulty : that the construction put upon that statute, which was in *pari materia* and under which a discussion of some branch of this subject was had almost every day, must form the rule of decision here : that the legislature has there enumerated those particular species of property, which in their idea might constitute ability, and were thereby subject to charge : that it was insisted, that under that act this property was rateable : how then, if ability generally will subject and the expression of one thing is not the exclusion of another, could it have been ruled ; that a successful adventurer in a coal-mine is liable, but that an equal fund of wealth derived from a lead-mine is exempted ? That the universal sense of mankind has also confined the idea of rateability to objects daily before them : that water, appropriated by occupancy, is a perfectly new description of property liable to this charge : that it is true, that property of this nature has been subjected by *special acts of Parliament* to the land-tax ; but that, even if it were chargeable by *the general law* to the land-tax, that would not be a sufficient ground for supporting this assessment : that the case of a salary is precisely in that situation, and an adjudication directly in point [a]. It pays to the land-tax, but it is not rateable to the poor. That where a different mode of cultivation, or water, the natural produce of the earth, being impregnated with qualities that make it more marketable, improves the value of the land, such property must be rateable ; but that this property is no more local, no more attached or annexed to the soil, than a weaver's loom ; which has never yet been thought of as a subject rateable : and that if this must be considered as a profit issuing from something local and visible within the ward, it was yet intitled to exemption, as a mechanical invention, a great work and a public benefit.

[a] *Rex v. the inhabitants of Shallfleet.* H. 7 G. 3. 1767. 4 Burr. 2011. Bott. 46.
Lord

1783.
 ~~~~~  
 ATKINS & al'  
*versus*  
 DAVIS & al'.  
 Saturday,  
 Novem. 27.

Lord *Loughborough* Ch. J. now delivered the judgment of the Court of Exchequer Chamber; which consisted of *Skynner* Lord Ch. B. *Gould*, J. *Nares*, J. *Eyre*, B. *Hotbam*, B. *Perrin*, B. and *Heath*, J.

The act on which the damages were recovered, and on which there is to be an assessment of those damages against other persons than those from whom they are originally recovered, is the riot act; which I need not particularly cite, because, as to the mode of levying it, it refers itself to the 27th of *Elizabeth*: it is to be made in like manner, and assessed as by the statute of the 27th of *Elizabeth*. By that statute the inhabitants and residents are the persons first mentioned, as those who are to pay. The mode in which they are to pay is ascertained by the 5th section. Two Justices of the peace are to assess and tax "rateably and proportionably according to their discretions all and every the towns, "parishes, villages and hamlets; and that after such taxation "made, the constables shall have power to assess *according to their abilities every inhabitant and dweller* towards the payment of such "assessment as shall be so made by the Justices."

There is therefore first a rate to be made upon a district, and then the proportions of that rate are to be made upon every inhabitant within the district; and they have power to rate every inhabitant and dweller according to their ability. The first question therefore that arises upon this statute is, Whether the plaintiffs in the action can be deemed inhabitants and dwellers within the district, where the assessment has been made by the constables? And as to that, inhabitancy in the sense of the legislature, upon this statute particularly, has been expressly determined not to be confined to the local residence of the person within the district; but that in the sense of the law those are inhabitants, who have taxable property within the district, in the very expression of Lord *Coke* in his second Institute: those who have lands and tenements in their own possession within the district are to be deemed inhabitants: and in the case cited from 2 *Saunders* 423, *Leigh v. Chapman*, the same rule is laid down in the construction of this very statute.

That the plaintiffs in the original action have property within the district, there can be no dispute. They are in that sense of the phrase inhabitants and dwellers; and the nature of their property is such, that it is of a permanent, visible, annual, real value:



lue : it consists in rents collected for the use of water, distributed in the various parts to which the water runs : but the proper place, where the value of the whole is to be taken, is to be sure at the fountain head from which the whole is distributed : however it is not very material to consider that ; for upon the present action it is certainly sufficient to warrant the levying of the distress, that there was a foundation to make a rate, and some property rateable.

1783.

ATKINS & al'  
versus  
DAVIS & al'.

Against this construction of the statute the principal argument which has been used, indeed the whole of the last argument was an endeavour to make it out ; that by the 43d of *Elizabeth* property of this nature was not rateable towards the support of the poor ; to which there seems to be many satisfactory answers.

The legislature has not referred itself to the 43d of *Elizabeth*, as the rule by which this assessment is to be levied, but to the 27th of *Elizabeth*. It is sufficient to say, it has not done it. But the 43d of *Elizabeth* is so well known an act, that it strikes me, that the legislature, not having referred to that as the rule of assessment but having referred to another, must have so done for some good and solid reason. This is not a constant, permanent, annual burthen, but to be borne only occasionally : and then the occasions themselves are very rare, and the rule by which the assessment under the two acts is to be made is different. The assessments here are to be made according to the abilities of the persons ; that is, according to their existing abilities at the moment the event arises, that gives the magistrates and officers their authority to levy. The subject of the two acts is also perfectly different ; the one being to raise an additional sum to answer a contingent and accidental charge, the other to raise a stated, constant income. There is another difference remarkable between the two : that the subject of the 27th of *Elizabeth* only takes notice of the persons to be charged "inhabitants" or "dwellers," and they are to be taxed according to their ability generally. The statute of the 43d of *Elizabeth* in a great many instances particularizes the taxable subjects : but (besides that) it would be a strange way of considering the 27th of *Elizabeth*, to determine the sense of that act by the exposition that has been made of a statute, passed a great many years afterwards and relating to a subject very different and distinct from it.

The

1783.  
 ~~~~~  
 ATKINS & al'
versus
 DAVIS & al'.

The opinion of all the Judges is, that the judgment that has been given below for the plaintiffs in the original action ought to be

Reversed.

Wednesday,
 July 2.

Rex v. Peter Waldo, Esquire.

An alms-
 house, wholly
 occupied by
 objects of a
 charity or their attendants and of which *no profit is made*, although the absolute property of it is in the person who gives the alms, has no legal occupiers; and is not an object of taxation under the poor laws.

TWO Justices allow a rate made for the relief of the poor of the parish of *Mitcham* in the county of *Surrey*.

Upon the appeal of *Peter Waldo* Esq, alledging that he was aggrieved by being "over rated and charged," the sessions dismissed the appeal, confirmed the rate and stated the following case:

That Mr. *Waldo*, the appellant, being seised of a messuage at *Mitcham* let at eight guineas *per annum*, was rated and paid poor rates for it: about six years ago Mr. *Waldo* pulled down this house and built a new one on the same spot, furnished it and placed in it ten poor girls, some of the parish of *Mitcham* and others of the neighbouring parishes; where they were educated, maintained and brought up on his charity: and provided a woman and paid her wages as his servant to superintend them, instruct them in reading and working, and to qualify them for services. This woman and the ten children were the only persons resident in this house, which was solely appropriated for this purpose; and vacancies from time to time supplied at Mr. *Waldo's* discretion and choice.

Upon the motion for the rule to quash this order of sessions, *Palmer* cited the case of [a] the *K. v. the Inhabitants of Saint Bartholomew the Less*, to shew that the defendant could not be considered as the *actual* occupier: and also that of [b] the *K. v. the occupiers of Saint Luke's Hospital*, to shew that the defendant, who derived no profit from this house, could not, during its application to the present uses, be any more considered as interested in the subject than the nominal trustees in that case, and consequently

[a] Tr. 9 G. 3. 1769. 4 Burr. 2435.
 [b] M. 1 G. 3. 1760. 2 Burr. 1053. 1 Blackst. 249.

that

that they were in no sense, and not even *constructive* occupiers.

1783.

REX
versus
WALDO, Esq;

And now *Mingay*, who was to have shewn cause in support of this order of sessions, began to state, that, though this was the case of a house wholly appropriated to charitable purposes and occupied solely by the objects and ministers of that charity, yet it most materially differed from the cases that had been cited; as there the buildings were for ever and irrecoverably dedicated to the public service; but that this was a mere temporary appropriation and the building might be resumed at will by the defendant, its unquestionable owner: when the Court, without hearing either side, said, that the case was too clear for argument.

Lord Mansfield.

The Court took the distinction yesterday [a]. Mr. *Waldo* makes no profit of this building: and it is sufficient, that this is so in fact, and the profit is here in fact applied to public and charitable uses.

Buller, J.

Do you mean to argue that if a man gives all he has in charity, he shall apply something more in charity?

Willes, J. concurring,

Lord Commissioner *Ashurst* was absent.

Rule absolute, and
Order of Sessions, setting
aside the Rate, quashed.

[a] In the case of *Robson v. Hyde & al'* ante p. 310.

R. v. Inhabitants of Grendon Underwood.

Monday
July 7.

TWO Justices by an order remove *William Bafeley, Sarah*, his wife and their three children, from the parish of *Grendon Underwood* in the county of *Buckingham* to the parish of *Deddington* in the county of *Oxford*. The sessions on appeal adjudged the settlement to be at *Grendon Underwood*, quashed the order and stated the following case:

Services under a hiring a few days before Mich. expressly for a year, i. e. from Mich. to Mich. and under a hiring

again to the same master three days after Mich. till the same Mich. ensuing, though at different wages and for a different service, will connect to give a settlement. An agreement made part of a hiring for a year from Mich. to Mich., that the servant is to go into the service three days after Mich. is an absence with leave; a dispensation, and not an exception from the original contract.

3 A

That

1783.

~
 REX
 versus
 Inhabitants of
 GRENDON
 UNDER-
 WOOD.

Settlement at
 Deddington.

That *William Bafeley*, the pauper, was born in the parish of *Deddington*: that at *Bicester* hiring fair 1773, which was the *Friday* before *Michaelmas* day (old style), he hired himself from *Michaelmas* (old style) for a year to *John Head*, a farmer at *Grendon Underwood*, to be his carter: that he had 1 s. earnest, and was to have 6 l. wages, and go into his master's service the *Wednesday* after *Michaelmas* day (old style): the pauper accordingly came that day in the afternoon to his master's at *Grendon Underwood*, where he had some refreshment; and his master told him he had hired another servant in the place he had hired him to do; but that he wanted a man to milk and go to plough, and if he liked that work he might stay: the pauper, thinking himself not well used, refused that service, and the master told him he might keep his earnest and go about his business; upon which the pauper said, "am I at liberty to hire myself to any other person?" and his master answered him in the affirmative; both the master and pauper looking upon themselves at liberty from their contract with each other. Upon this the pauper left his master's house, taking his cloaths away with him, and went to an alehouse at *Edgcott*, another parish about half a mile from *Grendon Underwood*; and in the course of the same afternoon the master met with him at the alehouse and hired him to serve the place of milkman and to go to plough, and gave him 2 s. 6 d. earnest, and agreed to give him 6 l. 6 s. wages, to serve him from that time till *Michaelmas* (old style): upon which the pauper immediately entered into his service and continued therein till the next *February*; when, his master's carter having left his place, his master hired him to serve the place of carter from that time to *Michaelmas* (old style) and gave him 1 s. earnest, and agreed to give him 10 s. 6 d. additional wages; and the pauper continued that service till the next *Michaelmas* (old style) and received his wages.

It was admitted upon the argument and appeared upon the Almanac, that *Michaelmas* day old style was in 1773 upon a *Sunday*.

Cowper, T. and *Whitchurch* shewed cause in support of the order of sessions; and insisted, that there was here both a hiring and service for a year: that what the law chiefly considers is the credit given; and then only requires that this should be evidenced by a retainer for a year: that such there was here: that though for the three first days the pauper was absent, he was no otherwise *sui juris* than

than as he had the permission of his master so to be: that he was then constructively, though not actually, in his service. That it was true that the master and servant had on the third day consented to avoid the contract; but that, as they had agreed again on the afternoon of the same day, this could not operate as a discontinuance; as it had been settled in the case of [a] the *K. v. the Inhabitants of Ellisfield*, that there can be no fraction of a day: that it was there said, that the case of [b] the *K. v. the Inhabitants of Fifehead Magdalen* had been determined upon the same principle; but that at any rate that case, as reported, had decided that a temporary suspension of the relation of master and servant for no greater a length of time than that of the present case, would not amount to a discontinuance. That, as an absence with leave was equivalent to actual service, this circumstance distinguished the present case from that of [c] the *K. v. the Inhabitants of Wintersett*; inasmuch as there no leave having been given the contract never commenced.

Bearcroft and *Wilson, G.* argued in support of the rule to quash the order of sessions; and *Bearcroft* insisted, that tho' a parting, a mere absence for an hour after a final settling of accounts, would not disconnect two services, yet there must be a contract for a year; which here there was not, or at least not any of that description, under which any service ever commenced: and that even if there had, the subsequent hiring for less than a year, under which only the service was performed, would not couple with a contract which was not *eiusdem generis* in every sense; being not only for different wages, but in a different character and with a view to [d] employment in a very different species of labour.

Wilson, G. contended, that there was here neither a hiring for a year, nor a service for a year: that there was no such legal *hiring*, for that the first contract, to enter upon the service three

1783.

REX
versus
Inhabitants of
GRENDON
UNDER-
WOOD.

[a] H. 17 G. 3. 1777. ante p. 4.

[b] M. 11 G. 2. 1737. Burr. Settl. Cas. 116.

[c] E. 23 G. 3. 1783. ante p. 298.

[d] It has indeed been holden, that *hirings* not *eiusdem generis*, as a weekly and a yearly hiring, will not connect. *Rex v. the inhabitants of Wrinton* otherwise *Wrinton*. M. 22 G. 2. 1748. Burr. Settl. Cas. 280.: but in the case of the *K. v. the inhabitants of Bagworth* this difference in the two contracts was disregarded; and the Court were of opinion, that, where the *services* were the same, and under each hiring the servant a menial servant, two hirings might be connected. E. 22 G. 3. 1783. ante fo. 182. note b.

1783.
 REX
versus
 Inhabitants of
 GRENDON
 UNDER-
 WOOD.

days after *Michaelmas*, could not be so considered, the absence stipulated for being an exception from the original contract, a matter of right and not of dispensation: that, where a servant absents himself even without consent during the term, at any time after the contract is once made, it may be purged; but, when his title to absent himself is made part of his contract, it cannot. That, though the exercise of authority in a master may be matter of discretion, the power of coercion, the right of controuling his servant, must attach upon every instant of the term to constitute a legal service; and that here on the contrary the very terms of the contract created an independance in the servant, inconsistent with the very nature of the relation.

He also insisted, that there was no *service* for a year: that the whole conclusion, to be derived from the authorities of the *K. v. Fifehead Magdalen* and the *K. v. Ellisfield* cited on the other side, was; that a short interval, by which generally the subsistence of a relation between parties might be suspended, or in very strictness be said to have ceased, would not as applicable to the relation of master and servant be considered so to disunite and sever *two services, actually commenced* under a renewal of such relation, as to abolish all claims consequent thereon and prevent a settlement. But that in this case there was no commencement of the *first service* at all: that, before it commenced, a total end by mutual agreement was put to the contract upon which it was founded: that it is therefore the case of a mere naked hiring *without any service whatsoever* under it; a thing, to use the language of Mr. Justice Buller in the case cited of the *K. v. Winterfitt*, executory only: that such an executory contract for a year could not (and had not in any instance been so holden) be coupled with a subsequent service under a contract for less than a year: that this therefore brought the present case directly within the letter as well as the principle of that of *Winterfitt*, from which it was impossible to distinguish it.

Lord Mansfield.

It is lamentable that the poor laws should have produced so many decisions, each of them going upon their own circumstances. In this case it is expressly stated, that on the *Friday* before *Michaelmas* day the pauper was hired for a year from *Michaelmas*. It is then expressly stated, that they stood in the relation of master and servant from *Michaelmas* to *Michaelmas*. If so, it would be repugnant

pugnant to say, that this was not a hiring for a year. The case itself contradicts the idea, that it was a hiring from the *Wednesday* after *Michaelmas*. Then the absence was matter of indulgence on the part of the master; and, whether revocable or not, is so common in these transactions and so reasonable upon the commencement of a service, that it never has been considered as impeaching or affecting the validity of a contract. But under all the circumstances I consider it as an indulgence, which the master might revoke: what passed upon the *Wednesday* was a conversation respecting the different kind of labour, in which the master then proposed to employ the servant. The servant gives up his objection; the master betters his wages; and the service goes on and is completed. It seems therefore to be a hiring and service for a year without any interruption on account of the short disagreement.

Willes, J.

The case of *Winterfett* is very different from the present. There, after an absence of a month, the mistress refuses to receive the servant without a new contract; under which the servant submits to make a compensation to the master for lost time during his absence; here on the contrary the master, having disappointed the servant of the service intended, makes a recompence to the servant by giving him another service and additional wages. Nice distinctions, subtilties, must not be admitted to deprive a man of his settlement. As to the rest, as the whole was the transaction of a day, this case seems to be governed by that of *Ellisfield*; where the Court would not allow of the fraction of a day.

Buller, J.

Whether in this case there was a sufficient service or not depends upon the hiring? The whole therefore turns upon the first question made, whether here is a hiring for a year? for if there was not, there could be no valid service for a year. That question then depends upon the terms of the contract: and in this as in all other contracts, by the universal rule of expounding them, all the words must have effect given them, if possible. Now the whole of the argument on the other side turns on giving only part of them effect. The case states expressly a hiring for a year; and, if you construe the conduct of the servant in not coming into his service till the *Wednesday* as an act of right, founded upon an exception in the original contract, you overturn that contract; whereas by construing it as a license or dispensation you give effect

1783.
 ~~~~~  
 Rex  
*versus*  
 Inhabitantsof  
 GRENDON  
 UNDER-  
 WOOD.

to

1783.

REX

versus

Inhabitants of  
GRENDON  
UNDER-  
WOOD.

to the whole. If then, after the hiring for a year which is expressly stated in the case, the leave of absence was given, absence by leave is the same thing as service.

Upon the ground that the service here never commenced, the case of *Winterfett* has been relied upon; but does not apply. In that case the pauper did not go to his place till a month after his term commenced, and never sent any notice why he did not go. There did not appear to have been any communication of any kind between his master and the pauper during all that time, much less any intimation of his illness and inability to come: neither did it appear, at the time of the new contract being entered into, that he insisted upon or any way brought forward this plea. Therefore, though the act of God discharges the obligation of actual service, it did not appear, at the point of time to be looked to, the time when the first contract was rescinded, that the case came under that rule. It follows, that the pauper was there hired for eleven months only, and that no annual service ever commenced.

Lord Commissioner *Ashburst* was absent.

Rule discharged, and  
Order of Sessions, quashing the  
Order of two Justices, affirmed.

Michaelmas



1783.  
 ~~~~~  
 REX
 versus
 Inhabitants of
 CHEW MAG-
 NA.

Settlement at
 Ubley.

the following words: "*Occupier* of late Mrs. *Hippesley's*: 3 s. "2 d. 4.;" and the *overseer applying* to pauper, he *paid* such rate twice: at this time the pauper resided in the parish of *Chew Magna*; *Harvey* continuing in the occupation of the premises.

Franklin shewed cause in support of the order of sessions; and admitted, that now, since the determination of the case of [a] the *K. v. the Inhabitants of North Curry*, he could not maintain that the pauper, who was not sole next of kin, had without administration acquired a settlement by an estate of his own.

But he insisted, though the pauper was not strictly the occupier, that he was yet sufficiently so for the present purpose: that he was not only interested generally in the amount of the rate, inasmuch as it could only be from a correct knowledge of the outgoings that he could be enabled to form a just estimate of his property; but must under the circumstances of this case be taken as the real occupier: that it would be too much to suppose almost in any case that the parish, by whom the charge is made, could be ignorant of the person upon whom they made it; but that in the present they by making the demand had ascertained it, and he by making the payment upon such demand had established it beyond all controversy, and intitled himself to the benefits to be derived from it: and that in the case of [b] the *K. v. the Inhabitants of Stapleton*, a resident in the parish, though not the real occupier, having been charged as occupier and called upon by the parish and having paid, was holden to have gained a settlement.

Lord Mansfield, (stopping Gould.)

To be sure, if the facts were otherwise, so also would be the law. The whole turns upon supposing the landlord and occupier to be the same thing; which they are not. Nothing is better understood than the distinction between them. If then it is clear that no settlement has been here acquired by estate, it is equally so, that none has by the rate; which is upon the occupier.

Willes and *Buller*, Justices, concurring,
 Lord Commissioner *Ashburst* was absent.

[a] M. 22 G. 3. 1781. ante p. 137.

[b] M. 10 G. 3. 1769. Bott. 335. Burr. Settl. Cas. 649.

1783.
 REX
versus
 Inhabitants of
 LITTLE
 BOLTON.

proved to be lost, and therefore parol evidence was allowed to be given of it.

Cockell shewed cause in support of these orders; and insisted, that the only question was, what was the meaning of the parties at the time of the agreement: *i. e.* whether the pauper was taken in the character of an apprentice or a servant? that nothing could be better understood than the distinction between them; the one acting always for hire, the other for instruction or improvement: that this is a contract by which it is covenanted, that the pauper *shall be taught*, and is therefore in the nature of an apprenticeship; and, being as such defective, cannot be converted into a hiring and service: that this was so laid down in many cases, particularly in that of [a] the *K. v. the Inhabitants of Kingsweare*: that the object of the two contracts is plainly different; and that this case is therefore in point: that a hiring must import pay, which there was not here: that the state of the case in [b] the *K. v. the Hamlet of Walton*, (*Ferrison's case*) was as far as respects the present question precisely the same as the present, tho' the principal ground of the decision was different: that the legislature meant to prevent such apprenticeships; and, if the Court so far supported them as to give them any effect in gaining a settlement, there would be great danger that the statute would be eluded and the revenue defrauded.

Lee, Attorney General, and Sir *Thomas Davenport* were now called upon to support the rule to quash these orders; and contended, that this had not the smallest resemblance of a contract of apprenticeship; that the pauper was to have *half his earnings from the first*: that no such idea as this was ever entertained in a contract for an apprenticeship: and that this therefore must have been meant as wages: that the same objection might have been taken in the case of [c] the *K. v. the Inhabitants of Buckland Den-*

[a] Tr. 16 G. 3. 1776. Burr. Settl. Cas. 839. And also in more recent authorities, viz. the *K. v. the Inhabitants of Highnam*. H. 25 G. 3. 1785. post. p. and the *K. v. the Inhabitants of Sandford*. Tr. 26 G. 3. 1786. 1 Duinford and East 281.

[b] E. 9 W. 3. Carth. 400. from whom it is copied by Mr. Bott. p. 282. Under different names and in different terms and years this case is reported in different books; but to the same effect in Comb. 445. 5 Mod. 328. Fort. 214. and 2 Salk. 479. In Skinn. 671. however the decision of the Court is stated to have been directly otherwise: upon which Mr. Bott observes, and it should seem very rightly, that "this report is totally the reverse of what it ought to be."

[c] H. 12 G. 3. 1772. Burr. Settl. Cas. 694. Bott. 297.

ham;

bam; which was argued solely on the ground of exception from the contract, and determined accordingly upon that point, which did not occur here: *viz.* that a servant need not under every possible circumstance be during every instant of his term subject to the controul of his master: that here, as there, there is a mutual agreement; a retaining and a contract to serve: that it was true it might be objected, that in that case there was a *hiring* found: that the hiring need not be stated in terms: that it is enough, if from the facts it appears to the Court that the pauper was actually in the character of a servant: that there was no technical virtue in the words "hiring or letting:" that when the sessions use words which imply a hiring, it is the same thing: that the Court would form their judgment whether it was a hiring or not: that here they have stated what is equivalent to it; for they have stated an agreement to work with the master for two years and a half: and that hiring must always turn on the nature of the contract: that the master in this case might have maintained an action against the pauper himself for not working, and undoubtedly against a stranger for seducing his servant: neither of which he could have done in *Ferrison's* case; and therefore that the state of that case was no more to the purpose than the decision.

That, with respect to the argument that a hiring must necessarily import pay, in the case of [a] the *K. v. the Inhabitants of Birmingham* the servant was to receive no pay but what he earned, the contract being "good earn good hire," and he could not have been compelled to work at all: and that, in the case of [b] the *K. v. the Inhabitants of Hitcham*, where the servant was to be taught by his master the trade of a carpenter, and by express agreement to have "no money by way of wages," the Court held it to be a hiring and service and a settlement.

Cockell now added, as it was admitted that the intention of the parties at the time of forming this contract must guide the decision; that nothing could be more important in the discovery of that intention than the use of a term so peculiarly appropriated as that of *hiring*: that this had ever been so considered by the Court: and that there did not exist a single authority, in which a settlement under a hiring and service had been supported without the use of

1783.

REX
versus
Inhabitants of
LITTLE
BOLTON.

[a] H. 20 G. 3. 1780. ante p. 77.

[b] H. 33 G. 2. 1760. Burr. Settl. Caf. 489.

1783. this word, or some other fully equivalent : that it was express'ly so
 in the case of *Fuckland Denbam* : that in the case of *Hitcham*, the
 phrase was "lett himself," and the employment of the servant was
 to be in different kinds of labour.

REX
versus
 Inhabitantsof
 LITTLE
 BOLTON.

Lord *Mansfield*.

This is not a hiring and service. If an indenture were not made necessary, there could be no doubt as to its being an apprenticeship ; for the pauper is *to be taught*, and pays a consideration for it, and is to do no other work : but, if these agreements were allowed to give settlements, there would be an end of indentures of apprenticeship, and also of the revenue [a] derived from thence.

Buller, J.

I should have been better satisfied if the cases had gone the other way ; because when a man engages to work for another he hires himself to such an one : but the cases seem to have taken another turn, and if they have settled it, I adhere to the authorities. The rule was accordingly then discharged and both the orders affirmed.

But presently *Willes, J.* observed, that *Ferrison's* case cited by Mr. *Cockell* did not apply.

Buller, J.

That was the case of an agreement between a master and a third person, a tradesman, that he should teach his trade to the master's servant ; the servant himself being no party. And the Court said they would look into the cases.

Thursday,
 Novem. 27.

And now Lord *Mansfield* delivered the judgment of the Court. We have looked into the authorities and we find that all those cases of apprenticeships, which have been holden to be defective and not convertible into hirings and services, speak of the pauper *as an apprentice*, and that he was to serve as such. There is no such statement here, and we are therefore of opinion that it is a good hiring and service.

[a] As an apprenticeship, like the present, for no longer a term than three years, does not intitle to set up a trade, it does not seem that the revenue could ever have been in any great degree affected by a fraud, of which the party practising it could not have the full benefit. And, as it has already been settled by a resolution of the Judges, in the case of *Wallen qui tam v. Holton*. Tr. 33 & 34 G. 2. 1760. 1 Blackst, Rep. 233, that serving as an apprentice for seven years does so intitle, this seems in point of extent to be carrying the mischief, if it were one, much farther.

Willes,

Willes, J.

The cases that apply are [a] the *K. v. the Inhabitants of Whitechurch Canonorum*, [b] the *K. v. the Inhabitants of All Saints in Hereford*, and the case of *Kingsweare* cited in the argument.

Lord Commissioner *Ashurst* was absent.

Rule absolute and
both Orders quashed.

1783.
REX
versus
Inhabitants of
LITTLE
BOLTON.

But in the *K. v. the Inhabitants of Highnam*, where the written agreement did not in terms state an apprenticeship, yet, as the contract was proved to have been entered into with a view to an apprenticeship and in fraud of the revenue, the Court held that contract was not convertible and could not be considered as a hiring and as intitling to a settlement. *H 25 G. 3. 1785. post.*

[a] Tr. 5 G. 3. 1765. Burr. Settl. Caf. 540.
[b] H. 10 G. 3. 1770. Burr. Settl. Caf. 656. So also in the case of Salford and Storeford. M. 5 G. 2. 2 Barnardist. 39. and that of the *K. v. the Inhabitants of Saint Mary Kalendar in Winchester*. Tr. 21 & 22 G. 2. 1748. Burr. Settl. Caf. 274.

Rex v. Inhabitants of Edifore, otherwise Hedfor.

*Wednesday,
Nov. 26.*

TWO Justices by an order remove *Elizabeth Wooldridge*, wife of *John Wooldridge*, and their three children from the hamlet of *Upton and Signet* in the parish of *Burford* in the county of *Oxford* to the parish of *Edifore* in the county of *Bucks*. The sessions on appeal confirm the order, and state the following case:

Upon the removal of a wife, it is enough in the first instance to prove her maiden settlement.

That on appeal counsel were heard on both sides. That the appellants proved by the testimony of *Elizabeth Wooldridge*, that she, the pauper, was born at *Offcomb* in *Devonshire*. The respondents then proved by the testimony of the said *Elizabeth Wooldridge*, that she was the wife of the said *John Wooldridge*; but no proof whatsoever was given by them of the husband's settlement.

Wilson, J. and *Morgan*, shewed cause in support of these orders; and contended, that the appellants had made no case; a married woman having no settlement of her own: that, the pauper being such, her settlement is her husband's settlement; and

that

1783.
 Rex
 versus
 Inhabitants of
 Edisore.

that the adjudication that she is settled in *Hedfor* is consequently in effect an adjudication, that *Hedfor* was the place of her husband's settlement: that, in the case of [a] the *K. v. the Inhabitants of Higber Walton*, where upon the removal of a wife to the place of her last legal settlement, it was objected that it did not appear whether this settlement was in *her own* right or in that of her husband, the Court said, that "she *could not* be settled at any other place than where her husband was settled:" that, if the effect of the order is *prima facie* to fix the place of the husband's settlement, this presumption cannot be done away merely by shewing the place of the wife's maiden settlement: it can only, by shewing a settlement of the husband in another place. That it was immaterial upon the order of the proceeding, that no proof had been made on the part of the respondents: that they need not prove any thing: that every thing they rely upon must be presumed, till the contrary is shewn; as it was incumbent upon the appellants, who begin, to impeach the judgment.

Bearcroft, in support of the rule to quash these orders, insisted, that the Court would consider the facts stated, and not the practice of the sessions in making one side or the other begin.

Lord *Mansfield*, (stopping him.)

There is nothing at all in this case. The sessions have found the settlement of the wife, and it did not appear that the husband had any.

Buller, J.

The case cited by Mr. *Wilson* is not applicable: no fact is found there, [b] not a word of any settlement of the wife's; and the presumption is in favour of the order. But here the fact is contrary to the order.

Willes, J. concurring,

Lord Commissioner *Ashburst* was absent.

Rule absolute, and both
Orders quashed.

This point had been previously settled by many authorities: viz. in the case of the *K. v. the Inhabitants of Ryton*. H. 18 G. 3. 1778.

[a] H. 14 G. 2. 1740. Burr. Settl. Cas. 162.

[b] It was a motion to quash the order for want of sufficient certainty upon the face of it.

Trinity Term 23 Geo. 3.

373

ante p. 39. The K. v. the Inhabitants of Hensingham. Tr. 22 G. 3. 1782. ante p. 206. and the K. v. the Inhabitants of Woodsford. H. 23 G. 3. 1783. ante p. 236.

1783.

Rex
versus
Inhabitants of
Edisore.

Wednesday,
July 2.

Rex v. Inhabitants of Andover.

TWO Justices by an order remove *Ann Day*, wife of *Thomas Day*, and their four children from the parish of *Andover* in the county of *Southampton* to the parish of *Lambourne* in the county of *Berks*.

Justices in an
order of re-
moval stating
themselves to
be justices for
a "borough

"or town and parish" describe themselves with sufficient certainty.

The magistrates in the above order stated themselves to be "two of his Majesty's Justices of Peace for the borough or town and parish of *Andover*, &c."

The court of quarter sessions, being of opinion that the two justices had not with sufficient certainty stated for what *place* they were justices, "adjudged, that the order ought to be quashed for "irregularity upon the face of it," and quashed it accordingly.

Bearcroft shewed cause in support of the order of sessions; and contended, that so far from having any thing like precision and certainty, nothing could be more equivocal and uncertain than the form in which the order of removal was drawn: that if "and" had been substituted for "or", an intelligible meaning had been conveyed; but that, as it stands, the justices may be justices for the town and not for the borough, or for the borough and not for the town: but certainly not for both, nor does it appear for which.

Buller, J.

Whether for one or the other, enough appears to support the order; for both town and borough are coupled with parish. And they sufficiently appear to be justices of either of those places, for which they were empowered to make this order.

Lord *Mansfield* and *Willes, J.* concurring,

Lord Commissioner *Ashturst* was absent.

Rule absolute,
Order of Sessions quashed, and
Original Order affirmed.

Rex

Wednesday,
Novem. 12.

Rex v. Inhabitants of Endon, Longsdon and Stanley.

A tenant,
whose name
has once been
introduced
upon the
land-tax rate,
tho' it is ta-
ken off in the
same year in

consequence of his poverty and at his request, as the tax is a tenant's tax, is to be considered as rated by the parish, if they put no other upon the rate, and gains a settlement; tho' the landlord had previously been rated. Who is rated is a question of fact. The act for regulating the right of voting does not, in the form of assessment that it gives, prevent parishes from rating landlords or any other persons by name.

TWO Justices by an order remove *Thomas Lowell, Esq.*, his wife and their two children from the hamlet of *Tittesworth* in the parish of *Leek* in the county of *Stafford* to the united townships of *Endon, Longsdon* and *Stanley* in the same county. The sessions on appeal confirm the order and state the following case:

That *Thomas Lowell*, the pauper, being legally settled in the township of *Endon* in the parish of *Leek* in the county of *Stafford*, rented a cottage of Lord *Macclesfield* at *Lady-day* 1776 in the hamlet of *Tittesworth* at the rent of twenty shillings a year: And at the time of taking it was agreed between the pauper and Lord *Macclesfield's* agent, that the pauper should pay the land-tax and all other taxes; but it did not appear, that this agreement was at any time known by the officers of *Tittesworth*. That the pauper entered at *Lady-day* 1776 and continued in possession of the premises, till he was removed in *December* last; and during all the time was called upon by the parish officers of *Tittesworth* to pay and did pay the land-tax for the premises: but at *Michaelmas* 1780 being ill and reduced in circumstances, he desired the parish officer that he might be excused; which the said parish officer promised to use his endeavour to do: and he never paid the land-tax after *Lady-day* 1781. And it appears from the rates of 1781 and 1782, that neither the pauper's name, or that of any other person living in the said premises, were inserted therein; or that Lord *Macclesfield* was rated for the same, though the pauper continued on the premises till *December* last: but it appears that some other premises of Lord *Macclesfield's*, in the occupation of *George Gillman*, were inserted in the assessments of 1781 and 1782 in the following manner; which were not inserted in any of the rates produced in Court previous to the rate of 1781.

Names

Names of Proprietors	Names of Occupiers	Houses and Lands	Sums Assessed
		ditto	£. s. d.
Earl of Macclesfield	George Gilman	House Land	0 0 5 ½

1783.
 Rex
versus
 Inhabitants of
 ENDON,
 LONGSDON,
 and STAN-
 LEY.

The pauper lived in part of the said cottage, and during some of the time let the remaining part, together with half an acre of land, for three pounds and ten shillings *per annum*. In the land-tax assessment of 1776 and 1779 Lord Macclesfield was assessed for the said premises.

In the year 1780 the form of the assessment of the said premises was as follows.

Names of Proprietors	Names of Occupiers	Houses and Lands	Sums Assessed
			£. s. d.
Earl of Macclesfield	Thomas Lowell	House Land	0 0 5 ½

The only rates produced were those for the said years 1776, 1779, 1780, 1781, and 1782. The said hamlet of *Tittesworth* maintain their poor separately; and the united townships of *Endon*, *Longsdon* and *Stanley*, maintain their poor separately from the rest of the parish of *Leek*.

Settlement at
Endon.

Leycester and *Plumer* shewed cause in support of these orders; and it was insisted by *Leycester*, that this was not a sufficient rating for the purpose of giving a settlement: that it was clear from the words of Lord *Hardwicke* in the case of [a] the *K. v. the Inhabitants of Sarrat*, that the *charging* is the principal thing; and the reason given is, that "it may be, that the parish would not charge the pauper for fear of making him a parishioner." That it is established in the case of [b] the *K. v. the Inhabitants of Carshalton*, that the inserting of the name of the tenant is not alone sufficient: it must be inserted for the purpose of rating him: so that this proposition is plain, that the notoriety arising from the tenant's name appearing in the rate is not sufficient to intitle to a settlement: that, if it were otherwise, the demand of payment by the

[a] M. 9 G. 2. 1735. Burr. Settl. Cas. 74.

[b] E. 15 G. 3. 1775. Burr. Settl. Cas. 809. recognized in the case of the *K. v. the Inhabitants of St. John Southwark*. Tr. 19 G. 3. 1779. ante p. 62.

1783.
 REX
versus
 Inhabitants of
 ENDON,
 LONGSDON,
 and STAN-
 LEY.

parish might be [a] deemed sufficient proof of a pauper's inhabitancy being known to the parish; but that there must be a consent of the parish by rating to charge themselves with him: and therefore in the *K. v. Sarrat* the charging is said by Lord *Hardwicke* to be the principal thing; "for that is the act of the parish;" and cannot be that of any individual: that, as here *non constat* upon the face of the rate, who was rated, other circumstances of notoriety were necessary to be resorted to for the purpose of shewing who was intended to be rated: that there were collateral circumstances that pointed out the landlord as the person here intended: that it was a very material circumstance, that the pauper, tho' his name had indeed once been introduced upon the rate, had never at any time been rated: that on the contrary the landlord was shewn to have been charged upon the rate in the year 1776 and 1779; and that it must be presumed, though the evidence was not produced, that he had also been rated in the intermediate years: that under such circumstances a jury would not hesitate in finding this fact with the landlord, and that the Court below had so found it: that the time also at which the tenant's name was inserted in the rate deserved consideration; that it was in the year 1780, the time when an act passed [b] for regulating the right of voting at county elections; which act directs the very form of assessment here used for the land-tax rate: that it must therefore be presumed, that the tenant's name was now introduced for the first time merely in compliance with the requisitions of the act, and not with any view of making any alteration in the person charged.

Willes J.

It is true, that the act passed in 1780, but it was not to be in force till January 1781.

Leycester. Though it was not to take effect till then, it was yet public, generally understood, and probably acted upon. That the case of [c] the *K. v. the Inhabitants of Mitcham*, could by no means govern the present: that there were none of the many

[a] And this principle did altogether guide the decision of the Court in a former case; that of the *K. v. the Inhabitants of Walsall*. M. 18 G. 3. 1777. ante p. 35. Sed vide the case of the *K. v. the Inhabitants of Chew Magna* in this term.

[b] 20 G. 3. c. 17. s. 19.

[c] E. 23 G. 3. 1783. ante p. 276.

weighty circumstances that indicated an intention in the present case of rating the landlord to be found there: that in these sort of cases it is a little, that is sufficient to turn the scale; and that a material circumstance in favour of the tenant in that case did not exist here: *i. e.* the presumption that arose (and was indeed considered as decisive) from the title of the rate; and that, that being upon *inhabitants*, the word inhabitant under that statute imported *occupier*. [a]

Plumer also insisted, that, as by the statute cited it is now no longer in the power of parish officers to exercise any discretion and to omit the names of any occupier in the rate, this consideration raised the subject of the present inquiry into a matter of great public importance: that if the name of every occupier, however small, without being charged or meant to be charged, but in opposition both to the duty and inclination of the parish officer, must be entered upon the rate, and when entered, must on payment be adjudged to give a settlement, the law of settlements would be overturned: that the statute, which enacts that no person renting less than ten pounds a year shall acquire a settlement, would be altogether repealed: that the consequences would be the most mischievous and oppressive: that there would be an immediate and universal removal of all persons coming to settle in small tenements: that it had been universally understood, that there were scarce any means by which a settlement could be acquired by a man's own act, unless with the consent and judgment of the parish officers, founded upon the ability of the party, or his having or holding property to a certain amount, or in some way conferring some benefit: that here on the contrary there needed not any such credit or property; no consent, for the rating was not voluntary; no choice or exercise of judgment, for it was not necessary to be elected to any office; and that from the land-tax payments no benefit was derived to the parish: and that it would be not a little extraordinary, if such consequences were to arise from an act, passed without having the poor laws in the smallest degree in contemplation, but with a view and purpose totally foreign and unconnected with them. That if, upon the principle of notice, a payment without rating could be holden sufficient, what should pre-

1783.

REX
versus
Inhabitants of
ENDON,
LONGSDON
and STAN-
LEY.

[a] It did not appear what was the title of this rate.

1783.
 ~~~~~  
 REX  
*versus*  
 Inhabitants of  
 ENDON,  
 LONGSDON,  
 and STAN-  
 LEY.

vent parole evidence, that a man was known to a parish, from giving him a settlement? But that the intention of the parish and not any notice, actual or constructive, was the principal ground upon which the Court decided the *K. v. Mitcham*, and the true ground: that the whole history of this transaction manifestly shewed, that it was the landlord who was intended to be rated; but that it was inconceivable, that it could have been the intention of the parish to rate, and by rating to incorporate as a parishioner, a man, who acknowledged his wretchedness and inability to support his independence.

*Wilson J.* in support of the rule to quash these orders was stopped by

*Lord Mansfield.*

The question is, who is rated? It is a question of fact. Here is no title to the rate; and upon the face of the rate it stands indifferent. What then are the circumstances? In the first place the parish officers have applied to the tenant and he has paid. He afterwards, in consequence of his poverty, applies to them to be exempted from payment in future. This is complied with, and what follows? They never charge any body else. They therefore thought the tenant ought to pay or nobody: and this is decisive, that the landlord was never intended to be rated. No inconveniences need be incurred from the provisions of the late act of Parliament: It does not prevent the parish from rating any body by name, as was done in the case of the *K. v. Carshalton*. They may still declare their intention to rate the landlord.

*Willes* and *Buller*, Justices, concurring,  
 Lord Commissioner *Albhurst* was absent.

Rule absolute, and  
 Both Orders quashed.

For the purpose of exhibiting at once a view of all the authorities upon this subject, I have thought fit to annex to this case two others, which would have regularly fallen within the period, which yet remains, and will form the concluding part of this work.

Michaelmas

---

# Michaelmas Term

25 Geo. 3. 1784.

---

Rex v. Inhabitants of St. Lawrence, Winchester.

Wednesday,  
Novem. 24.

**T**WO Justices by an order remove *Charles Scullard, Susan* his wife and their three children, from the parish of *Eastmeon* in the county of *Southampton* to the parish of *St. Lawrence* in the city of *Winchester* in the same county. The sessions on appeal confirm the order and state the following case :

Land-tax is a tenant's tax, as between him and the public ; and consequently where both

landlord's and tenant's names appear upon the rate, it is *prima facie* a rating of the tenant. Who is rated, is a question of fact.

That the pauper, *Charles Scullard*, his wife and three children, resided in the parish of *Petersfield* in the county of *Southampton* under a certificate from the parish of *St. Lawrence Winchester* in the same county, for some time previous to the year 1780 : That he removed before the making of the assessment after mentioned with his said wife and family into the tything of *Eastmeon* in the parish of *Eastmeon* in the same county ; and occupied a house there till the eighth day of *May* last, the day of making the order of removal : that *William Clark* was the proprietor of the said house : that on the 7th day of *June* 1783 a land-tax assessment for the tything of *Eastmeon* in the parish of *Eastmeon* was made in the following form : that the title of it was as follows :

" County

1784.  
 REX  
 versus  
 Inhabitants of  
 St. LAW-  
 RENCE,  
 WINCHES-  
 TER.

"County of Southampton, } For the tything of *Eastmeon* in the said coun-  
 to wit. } "ty: an assessment made in pursuance of an  
 "act of Parliament passed in the 23d year  
 "of his present Majesty's reign, for grant-  
 "ing an aid to his Majesty by a land-tax,  
 "to be raised in *Great Britain* for the ser-  
 "vice of the year 1783:"

| Rentals.               | Names of Proprietors. | Names of Occupiers. | Sums assessed.                  |
|------------------------|-----------------------|---------------------|---------------------------------|
| £. 1 0 3 $\frac{1}{2}$ | Mr. Will. Clark.      | Charles Scullard.   | £. s. d.<br>0 4 0 $\frac{1}{2}$ |

That the pauper, *Charles Scullard*, after this rate paid the under-mentioned *Joseph Terrell* (who called at the pauper's said house with the said assessment) two shillings and an halfpenny, being for one half year of the said assessment; and the said *Joseph Terrell* gave him a receipt for the same in the words and figures following:

"October 20th, 1783, Received of Mr. *Charles Scullard* 2 s.  
 "and  $\frac{1}{2}$ . for half a year's land-tax for Mr. *Clark*'s house, due at  
*Michaelmas* last past.

£ 0 2 0  $\frac{1}{2}$ .

per *Joseph Terrell*, Assessor."

Settlement at *Eastmeon*. That the parish of *Eastmeon* consists of seven tythings, of which the tything of *Eastmeon* is one; which several tythings are separately assessed to the land-tax: that the said *Joseph Terrell* was collector of, as well as assessor to, the land-tax.

*Bearcroft* and *Marshall* shewed cause in support of these orders; and *Bearcroft* insisted, as it had been decided in the case of [a] the *K. v. the Inhabitants of Endon, Longsdon and Stanley*, that who is the person rated, is always a question of fact, the landlord in

[a] M. 24 G. 3. 1783. ante p. 374.

this case was plainly that person: that the fact had been so found by the Court below: that the late act [a] having prescribed the form of the rate here used and also directed that the landlord should be rated, it must be taken that he, out of the issues of whose hands this charge is to be deducted, was the person meant to be charged: and that, as the receipt was given for Mr. *Clark's*, the landlord's house, this presumption could not be repelled by the single circumstance of the receipt having been given to the tenant.

*Marshall* also insisted, that, as independent of the receipt it was upon the face of the rate equivocal who was rated, extrinsic circumstances must be resorted to as a guide: that, unless it can be shewn that a pauper's name had been inserted there for the purpose of rating him, it is not enough that it appears there: that upon a general view, of the land-tax act [b] it must be considered, as it has been universally denominated, a landlord's tax: that in general the charge is, in conformity with this opinion, made upon the landlord: that, whatever private contracts may subsist and what hand soever deposits the money, it is he, who ultimately and substantially always answers the demand to the public: that in every clause and passage of the act in which he is charged with any other, he is charged in the first instance; and is manifestly the object of taxation: that it is the land itself, upon which in *§. 4.* (the clause which creates the charge) the burthen is thrown: that it is in respect of his interest in the land only, that any person whatsoever is charged: that if it be said that the person, on whom the clause creating this charge throws it, is the person "having or holding" the land; I then ask whom can this mean? That there can be no answer to this inquiry at once so authoritative or more demonstrative than that which the legislature themselves in *§. 9.* (the next that touches this part of the subject) have given: that in this clause they direct the course to be taken by the collectors in making this demand: Of whom then are they to demand it? In the first place, "of the parties themselves, if they can be found, or else — at their last abode, or — upon the premises charged:" that it is evident from hence, that the only persons that

1784.

REX  
versus  
Inhabitants of  
St. LAW-  
RENCE,  
WINCHES-  
TER.

[a] Stat. 20 G. 3. c. 17.  
[b] 17 G. 3. c. 3.

could

1784.  
 ~~~~~  
 REX
 versus
 Inhabitants of
 St. LAW-
 RENCE,
 WINCHES-
 TER.

could possibly be meant in *s.* 4. by the description of "having or holding" must be those who are described in this clause as *the parties themselves*: that from the obvious unanswerable sense of the context there could be no other description of persons than the *owners or proprietors*; for the collector is required to make the demand next "at their *last* abode;" *i. e.* the *last* abode of *the parties themselves*. Now, if *the tenant* cannot possibly be pointed at under this description of his place of residence, it is not he who is *the party himself*; nor can he be the person described as "having or holding" in *s.* 4: that it is absolutely impossible that *the tenant* can be the person aimed at here; for he can only abide upon the premises charged: he can have no other abode: but *the landlord* has no necessary local residence, he cannot be confined to his demesne, but may remove and shift from place to place; his *last* abode is therefore uncertain: and consequently that it is manifest, that the persons having or holding, the parties themselves and the place of abode can be no other than the *landlord's*, and that of *the landlord*: that it appears that the only person, of whom there is any express designation, is the person of the owner or landlord; that this person is also first pointed out to the collector as the object of taxation; and also that this person's place is the first place to which his attention is directed. That then the last remedy, without any previous mention or reference to the *person* of the tenant, is given "upon the premises charged:" that, as somehow and somewhere a responsibility ought to be insured to the public and as the landlord's residence could not be ascertained and difficulties or delays might arise there, the public officer is therefore licensed to enter "upon the premises:" that it seemed to be a most reasonable intendment, that the person who is to pay is the person upon whom the charge is *prima facie* to be taken to lie; and that here, not only upon the general principle but upon the letter also, the tenant's act is plainly vicarious. It is not the tenant who is *rated*: he is only the person authorised by the act [a] to pay the sums rated.

That in the case of [b] the *K. v. the Inhabitants of Mitcham*, it had been argued from *s.* 64. which refers to the

[a] The words of the act are: "The tenants of all houses, lands and tenements which shall be rated, are required and authorised, to pay the sums rated, and deduct it out of the rent; and the landlords, both mediate and immediate, are required to allow such deductions. *s.* 17.

[b] *E. 23 G. 3. 1783. ante fo. 280, 81.*

double tax imposed in a former clause, *s.* 60, upon Roman Catholics, that as by express words the landlord only was subjected to the charge and payment and the tenant was expressly discharged, it was manifest that in the contemplation of the legislature the tenant must in all other cases have been otherwise at least equally liable to both: but that this clause afforded no such conclusion: that without it indeed, the premises here, as in all other cases, might have been resorted to; and that the particular and obvious view of the legislature was to prevent the Roman Catholic landlord from evading the proper payment by collusion with his tenant; through whose means it might have been contrived, that no more than the *single* tax should be received by the public: that upon the whole view of the subject this was therefore clearly a landlord's and not a tenant's tax.

That *s.* 39. provides, that, if "lands &c. shall be unoccupied" and no distress can be found on the same, the collectors, &c. "may at any time after distrain:" that under these circumstances it is impossible that any tenant could be rated: that a settlement can only be gained by a *rating* as well as a paying; and that it has been holden [*a*] that the charging is the principal thing: that it could not possibly therefore be meant as a tax upon him who could not possibly be charged or rated; but upon him only, for and on behalf or in lieu of whom in every case the payment must be made.

That to consider this case upon the late [*b*] act, though that act had been framed with a totally different aim, he contended that the assessors could not vary the form of assessments from that which is directed in *s.* 3: that to enter into this question was, he conceived, open to him; for that the case of the *K. v. the Inhabitants of Endon, Longsdon and Stanley* could not have been decided upon this act, as the rating then in question was previous to the time at which this act came into operation: that explanatory memorandums, notes pointing out who was intended to be rated, would be dangerous, and defeat what was really the aim of that act: that by *s.* 4. a penalty of 5 *l.* is incurred by the collector if he alters or defaces; and therefore no note annexed ought to be regarded: that by *s.* 13. the duplicates are made legal evidence. Can they then be altered by a parish officer?

1784.

REX
versus
Inhabitants of
St. LAW-
RENCE,
WINCHES-
TER.

[*a*] *Rex v. the Inhabitants of Sarrett*. M. 9 G. 2. 1735. Burr. Sett. Cas. 74.

[*b*] 20 G. 3. c. 17.

1784.
 ~~~~~  
 REX  
*versus*  
 Inhabitants of  
 ST. LAW-  
 RENCE,  
 WINCHES-  
 TER.

Lord *Mansfield*.

But this is after they have been returned to the commissioners or the clerk of the peace.

*Buller J.*

And so is the penalty, after they have been affixed to the church door, and after appeal had and the duplicate amended: but the note should be made before they are affixed to the church door, or at least before the amended duplicate is returned to the assessors.

*Marshall.* At any rate an act, drawn for the sole purpose of regulating the votes of freeholders at a county election, ought not to be permitted either to explain or vary or in any way affect the rights of a different class of persons, in the adjustment of their respective interests upon a subject matter quite foreign to its object and provisions.

*Burrough* in support of the rule to quash these orders insisted; that, whether this were considered as a question of law or of fact, the tenant was the person rated: that, considering it upon the face of the rate as a question of law, the land-tax was expressly adjudged in the *K. v. Mitcham* to be a tenant's tax: and that as here the names both of the proprietor and tenant appeared upon the rate, it was a clear legal inference, that the tax was imposed on him who was the proper object of it. That, taking it in the other view as a question of fact, the circumstance of the collector's calling at the pauper's house for the money, of the payment by the pauper and of the receipt given by the collector were enough also in this point of view to remove all difficulty and doubt; and that the words in the receipt "for Mr. Clark's house," were no more than a description of the subject matter of the charge, the thing for which the pauper paid.

*Buller J.*

You need not go any farther.

Lord *Mansfield*.

It has been decided over and over again that the occupier must be presumed to be rated, against whom the first remedy lies as between him and the public. Here his name is in the rate, and the officer receives of him. There is not a tittle to shew that the parish meant to rate the landlord. The receipt only describes the premises, upon which the assessment was made.

*Buller, J.*

It was expressly determined in the *K. v. Mitcham*, that the land-tax is *prima facie* a tenant's tax. Why? because all the remedies

remedies are against him: and, without some new ingredients in the case, the point ought not to have been stirred again. It was not said there, that you might not rate the landlord. You may. It is so holden in the *K. v. Endon, Longsdon and Stanley*; and Lord *Mansfield* said there, that "it is a question of fact, whether landlord or tenant is rated: and the sessions should state it: if they do not, the Court must collect it from the circumstances that appear to them; and, if nothing appear to the contrary, the occupier must be presumed to be the person."

*Willes* and *Ashburst*, Justices, were absent.

Rule absolute and  
both Orders quashed.

1784.  
~  
REX  
versus  
Inhabitants of  
St. LAW-  
RENCE,  
WINCHES-  
TER.

Rex v. Inhabitants of St. James, Bury St. Edmunds.

TWO Justices by an order remove *Samuel Cross Purkis* and *Sarah* his wife from the parish of *St. James* in the borough of *Bury St. Edmunds* in the county of *Suffolk* to the parish of *Hopton* in the same county. The sessions on appeal adjudged the settlement to be in the parish of *St. James*, quashed the order and stated the following case:

Though the land-tax is a tenant's tax as between him and the public, yet if the names of both landlord and tenant

appear upon the assessment and the receipt given to the tenant states that the sum paid was assessed upon the landlord, it is a rate upon the landlord; and the tenant does not acquire a settlement.

That the settlement of the pauper at *Hopton* under an hiring and service for a year was admitted. That the pauper, after the settlement so obtained, became an inhabitant and occupier of a tenement belonging to *Joshua Grigby Esq*; in the parish of *St. James* in the town of *Bury* at the yearly rent of 5*l*; and had, during his residence there, paid the land-tax there when demanded of him by the officer: that the rate was thereupon produced by the parish of *St. James*; the title of which is as followeth:

"Borough of *Bury St. Edmunds* in the county of *Suffolk*, for the parish of *St. James* in the said borough. An assessment made in pursuance of an act of Parliament passed in the 23d year of his Majesty's reign, for granting an aid to his Majesty by a land-tax to be raised in *Great Britain* for the service of the year 1783," and made in the following manner:

3 D 2

Names

1784.  
REX  
versus  
Inhabitants of  
ST. JAMES,  
BURY ST.  
EDMUNDS.

| Names of Proprietors. | N. of Occupiers. Eastgate Street. | What assessed and where situate. | Sums   | Assessed. |
|-----------------------|-----------------------------------|----------------------------------|--------|-----------|
| Joshua Grigby Esq;    | Samuel Purkis.                    | Tenant.                          | £4 0 0 | £0 4 0    |

All the other assessments are made in like manner: and it was likewise proved that the collectors, who are parishioners, did demand the said tax so assessed of the pauper, who paid the same: and they gave him a receipt in the usual printed form for it, in the words following, to wit:

“ The 25th day of *December* 1783. Received of Mr. *Samuel Purkis* the sum of 4*s.*, so much being assessed on the landlord for the third quarterly payment, pursuant to an act of Parliament for granting an aid to his Majesty by a land-tax to be raised in Great Britain for the service of the year 1783.

By *John Lawrence*, Collector.”

Settlement at  
*Horton.*

Whereupon this Court doth adjudge that the pauper, *Samuel Crofs Purkis*, by the above rating and payment, has acquired a settlement in *St. James* aforesaid.

*Mingay* shewed cause in support of the order of sessions; and insisted, that the sessions, by determining the settlement of the pauper to be at *St. James's*, had drawn their conclusion, that the tenant was rated and not the landlord: that it was this instant decided, that rating was a question of fact; and that, where both landlord's and tenant's names appeared upon the rate, it was the province of the sessions to find this fact of, Who was rated? [a] That it was settled [b] that the land-tax was a tenant's tax: that therefore at the time the rate was made the tenant was the person rated: that this could not be affected or varied by what happened afterwards between the collector and the pauper: that the rate is

[a] Rex v. Inhabitants of St. Lawrence Winchester. Vide the case immediately preceding.

[b] Vide the last case, and cases there cited,

the

the language of the assessor, the receipt is only the act of the collector. That this subsequent transaction ought not to change the nature of the fact, as evidenced by the most authentic instrument that the law knows upon that subject. That if the receipt shall be permitted to affect the rate, it will put every settlement under a rate in the power of the collector: that receipts were on these occasions frequently given to ignorant men: that to countenance this would open a door to great frauds: that the rate itself was the only safe guide: suppose the rate had said one thing and the receipt another? That the rate was made at the time and made first, and was therefore upon every principle intitled to a preference: that the tenant was subjected to all the inconveniences of being rated, and upon what principle was he to be deprived of the benefits? that the collector was not warranted by the rate in giving such a receipt, and that upon that ground the sessions might have decided as they did upon it.

*Adair, W. and Le Blanc*, in support of the rule to quash the order of sessions, insisted; that this was the reverse of all the former cases, for that here it appeared that the landlord was rated and not the tenant: that it was true that the rate itself was doubtful on the face of it, and that, if any principle was to be deduced from the cases generally cited upon the subject, it was, that, where it was left uncertain upon the face of the rate who was rated this might be explained by extrinsic circumstances: that the receipt did here explain the doubt, and shewed, that it was the landlord who was meant to be assessed: that in fact here is neither a rating or payment by the tenant: that, if the tenant is assessed, he certainly did not pay; for the receipt expresses, that the landlord paid: and no pauper can gain a settlement, without paying as well as being rated:

That if the Court, considering it as a question of fact upon which the sessions only could properly decide, are of opinion, that no decision has been made upon it, they must send it down to have the fact, whether the landlord was or was not rated, expressly found.

*Lord Mansfield.*

Regularly the fact ought to have been found; but to have it sent down would only create unnecessary expence, as the receipt is stated: and it does not appear that there is the smallest probability that any evidence beyond it can be added.

I stated

1784.

Rex

versus

Inhabitants of  
St. James,  
Bury St.  
Edmundsb.

1784.  
 ~~~~~  
 REX
versus
 Inhabitants of
 ST. JAMES,
 BURY ST.
 EDMUNDS.

I stated in the last case, that where it was uncertain who was rated, where the rate is silent and there is no other collateral evidence to supply this defect, the law would presume that the tenant was intended to be rated; because *prima facie* it is a tenant's tax, and he is consequently first liable. But, where the landlord is expressly rated, or where there is any collateral matter to shew that he is intended to be, there the legal presumption may be rebutted. Here is a strong piece of evidence coming out of the tenant's hands, to shew that the landlord was the object of the rate.

Buller, J.

This is not a presumption *juris et de jure*: it admits of contradiction. The receipt relates back to the time of the rate, and so it is not a rate of the tenant, but of the landlord: besides, the receipt is strong evidence as to the payment, that he paid it as agent to the landlord, as well as that the officer did not receive it of him in his own right: so that the tenant does not appear to be intitled either way.

Willes and Ashburst, Justices, were absent.

Rule absolute,
 Order of Sessions quashed, and
 Order of two Justices affirmed.

E R R A T A.

ERRATA.

- Page 174. l. 22. *for* "exception" *read* "restriction."
192. l. 30. *for* "do" *read* "does"
226. l. 18. *after* "not" *add* "an"
281. *Add to note* [b] "Vide the K. v. the Inhabitants of Chew Magna.
M. 24 G. 3. 1783. p. 365."
291. l. 26. *for* "the defendant" *read* "Smith."
298. In the margin *for* "Stainburgh" *read* "Winterfett."
318. last line *for* "Law" *read* "Lee."
327. l. 6. *for* "rated" *read* "made rateable."
328. l. 5 *for* "one hundred" *read* "twenty,"
l. 6. *after* "paid" *add* "for the well."
333. l. 29 *after* "nor" *add* "were they rated."
336. l. 32. *for* "but" *read* "in."
337. l. 34. *after* "him," *add* "who never has so before been rated;"
338. l. 5. *for* "consequently was" *read* "continued to be"
382. l. 17. *for* "landlord's" *read* "landlords."
-

IN

IN consequence of engagements that have arisen since the time of his last publication, the Author has been prevented from offering to the Public this part of his Work so early as it was his Intention to have done. The continuance of those engagements put it out of his power to fix the time, at which he shall be able to close his work by the publication of the remaining part.

TEMPLE,
FEBRUARY 10, 1789.

Hilary Term

1784.

24 Geo. 3. 1784.

Rex v. Utley.

UNDER the st. 22 & 23 Car. 2. c. 25, s. 3. for the better preservation of the game, which enacts that all persons, not having landed property of the description [a] and to the amount therein specified, "other than the son and heir apparent of an Esquire, or other person of higher degree, and the owners and keepers of forests, &c. in respect of the said forests, &c. are hereby declared to be persons by the laws of this realm not allowed to have or keep for themselves, or any other person or persons, any lurchers, &c. but shall be, and are hereby prohibited to have, keep, or use the same;" for the purpose of taking or killing game. The defendant was convicted for using lurchers.

Though esquires and persons of higher degree are not, by the express provisions of stat. 22 & 23 Car. 2. c. 25. exempted from penalties on breach of the game laws, yet the sons and heirs apparent of persons of higher degree are, as well as those of esquires, expressly exempted from such penalties.

The conviction, upon the information of *James Knowles* of *Langfield* in the West Riding of the county of *York*, stuff-maker, on the 18th day of *February* in the 23d year of the reign of *George* the Third, &c. before *Joshua Horton*, Esq. one of the Justices, &c. stated, that *William Utley* of *Stansfield* in the West Riding aforesaid, yeoman, did on the 17th day of *February* in the year aforesaid, at *Stansfield* aforesaid, use three certain dogs called *lurchers* for the destruction of game.

The conviction in negating the qualifications, that intitle to an exemption from the penalties of the act, and in stating the exception therein contained, instead of following the words of the act, which are "other than the son and heir apparent of an Esquire, or other person of higher degree", introduced the article "of" in the second branch of the sentence; which then ran, "other

[*] Vide the case of *Lowndes* Esq. v. *Lewis*, Clerk. E. 22 G. 3. 1782, ante 188.

1784.

REX

v.

UTLEY.

Wednesday,
Jan. 28.

“ than the son and heir apparent of an Esquire, or of other person of
“ higher degree.”

On a rule to shew cause why this conviction should not be quashed, *Chambre* objected; that, tho’ this reading might be in conformity with a precedent in point, it was so far from pursuing the act, as in penal cases convictions strictly ought to do, that it gave the sentence a new form; and so essentially varied its construction, that it had the effect of inserting a new clause, and was contrary to the sense, and also to the obvious spirit of the statute; as by its necessary construction an Esquire, and even Knight or Baronet would not be exempted from penalties, unless they had landed property of a certain description and amount, and their liability to these penalties, or disqualification, would have been effected by the very authority, that created the qualification of the son and heir of him, who was inferior in rank to the Knight and Baronet.

Lord Mansfield. The conviction gives the true construction. Under the statute a qualification by birth is given to the son and heir apparent of an Esquire or person of higher degree; presuming, that an Esquire or those of higher degree must be qualified in another manner, *i. e.* by their [a] landed property.

Buller J. This is the grammar as well as true sense and [b] spirit of the act. The Legislature, not conceiving that persons of the degree of Esquires could be without an estate to the amount of the qualification required in the former part of this clause respecting property, have not in express terms exempted them; but, as that would not be the case of an heir apparent, in his father’s life-time, of any estate, be its extent and importance what it might, his situation was made the object of the Legislature; and this special provision, this exception in opposition to the general restraining spirit of these laws, was introduced in his behalf. Besides, in the case of

[a] By the preceding section of the act it appears, that no quantity of property, landed or other, will intitle a lord of a manor, if under the degree of an Esquire, to appoint a game keeper.

[b] And such is the phrase and wording of a prior stat. *in pari materia*. After stating the exemption derived from land and personalty, it proceeds; “ or be the son or sons of any baron of parliament, or of some person of higher degree, or the son and heir apparent of an Esquire.” 1 Jac. c. 27. s. 3.

[a] the *K. v. Hawker* (which from Lord *Hardwicke's* notes on the back of the paper book appears to have been argued) this objection was open and not taken : and the precedents in *Burn* give the form used in this conviction.

1784.

REX
v.
UTLEY.

Lord *Mansfield*. To be sure if the son of an Esquire is exempted, the Esquire himself is.

Willes and *Ashburst*, Justices, concurring,

Rule discharged, and
Conviction affirmed.

The authority of this case was recognized by the court (*Willes J.* who retracted his former assent to this judgment excepted) in the case of *Jones v. Smart*, M. 26 G. 3. 1785. *Durnf. & East*. 1. 44.

[a] But it appears from the case itself, and from a note of *Gundry J.* with which I have been favoured, and also from another note in my own possession, that a clear and decisive ground there presented itself : and consequently that a nice and critical objection would, under such circumstances, hardly be resorted to.

The King and Hawker.

Upon *Yates's* motion a conviction of *Hawker* for keeping a pack of hounds for destruction of hares, he not having a qualification, was quashed by the Court ; no summons being set out in the conviction. Tr. 8 Geo. 2. *Cases in K. B. temp. Hardw* 130.

Rex v. Hawker, MS.

Defendant was convicted before a Justice of Peace upon the game act, not being qualified according to the statute. The conviction was removed here by *certiorari* and quashed, because it did not appear the defendant was summoned, or had an opportunity to answer the charge and defend himself. It is necessary in case of conviction to set out a summons, for in such cases nothing is to be intended. Tr. 8 & 9 G. 2.

Rex v. Harry Green, Gent.

Saturday
Jan. 31.

THIS was a conviction upon the stat. 5 G. 3. c. 14. s. 3. which enacts, " That in case any person or persons shall, after &c. " take, kill, or destroy, or attempt to take, &c. any fish in any " river or stream, pond, pool, or other water (not being in any park " or paddock, or in any garden, orchard, or yard adjoining, or belonging " to any dwelling house, but shall be in any other inclosed ground " which shall be private property) every such person being lawfully " convicted thereof by the oath of one or more credible witnesses or

Whether the whole allegation in a conviction can be considered as the charge, or whether the charge and evidence are distinct ? Whether either the

charge or evidence are sufficient, if set out by inference only and argumentatively, and not directly and positively ? Whether the character in which a party claims a penalty is necessary to be repeated in the adjudication, or whether such repetition may be considered as surplusage only ?

3 E 2

" witnesses

1784.

REX
v.
HARRY
GREEN,
Gent.

complaint
to him upon
etc to issue
warrant to
such person
complained of
as him and if
person so com-
plained of be con-
victed before him or
other justice etc
the oath of one
more credible
man etc

" witnesses shall forfeit and pay for every such offence the sum of 5*l.* to
" the owner or owners of the *fishery* of such river or stream of water,
" or of such pond, pool, moat, or other water, &c." The act pro-
ceeds to empower any magistrate of the county, &c. ~~to convict~~, and
directs, that the party convicted shall pay the penalty " to the jus-
tice or justices before whom he shall be convicted, for the use, &c.
as is hereby appointed, &c." The conviction was as follows:

County of *Southampton*, to wit. Be it remembered, that on the
3d day of *September*, in the 23d year, &c. at new *Alresford*, in
the county of *Southampton*, *James Morley* of the parish of *Ovington*
in the said county, labourer, a credible witness, and Sir *Henry*
Titchborne of *Titchborne* in the said county Bart., came in their pro-
per persons before us, *Thomas Baker* and *William Harris*, Esquires,
two of the Justices of our said Lord the King, assigned to keep
the peace of our said Lord the King in the said county, &c. and re-
siding near to the place where the offence hereinafter-mentioned
was committed: and the said *James Morley* on his corporal oath then
and there gave us, the said Justices, to understand and be informed,
that on *Tuesday* the 12th day of *August* last past, about seven o'clock
in the evening, he the said *James Morley* saw *Harry Green* of *New*
Alresford aforesaid, Gentleman, in the parish of *Ovington* aforesaid
in the county aforesaid, attempt to take, kill, or destroy fish with a
fishing rod and a fishing line, in that part of a certain river in *Oving-*
ton aforesaid in the county aforesaid, which runneth between the manors of
Ovington and *Old Alresford* in the said county, without the consent
of the aforesaid Sir *Henry Titchborne*, the then owner of the said part
of the said river, the said part of the said river being then private pro-
perty, and not being in any park or paddock, or in any garden, or-
chard, or yard, adjoining or belonging to any dwelling house, but
being in other inclosed ground, which then was private property,
contrary to the form of the statute made in the fifth year of the reign
of his said Majesty King *Geo.* the 3d., intituled "an act for the more
" effectual preservation of fish in fish ponds and other waters, and
" conies in warrens, and for preventing the damage done to sea
" banks within the county of *Lincoln* by the breeding conies
" therein," he the said *Harry Green* not then having any just right
to take, kill, or carry away, or to attempt to take, kill, or carry away
any such fish. And further that he the said *James Morley* knew, that
the said *Harry Green* had not the consent of the said Sir *Henry Titch-*
borne to take, kill, or destroy Fish, or to attempt to take, kill, or de-
stroy Fish in the said part of the said river, because he the said *James*
Morley,

Morley, by the orders of the said Sir *Henry Titchborne*, did, some short time before the said *Harry Green* so as aforesaid attempted to take, kill, or destroy fish in the said part of the said river, give notice to the said *Harry Green*, that he should not fish in the said part of the said river; and that he the said *James Morley*, knew that the said Sir *Henry Titchborne* was the true and lawful owner of the said part of the said river, because he the said *James Morley* for several years before the said *Harry Green* so as aforesaid attempted to take, kill, or destroy fish in the said part of the said river, rented the fishery of the said part of the said river of the said Sir *Henry Titchborne*, and because at the time when the said *Harry Green*, so as aforesaid, attempted to take, kill, or destroy fish in the said part of the said river, he the said *James Morley* was employed by the said Sir *Henry Titchborne* to take care of the fishery of the said part of the said river, he the said Sir *Henry Titchborne* having then and for some time before taken the fishery of the said part of the said river into his own hands. And the said Sir *Henry Titchborne* on his corporal oath complained unto us the said Justices, and gave us to understand, that before and at the time when the said *Harry Green* attempted to take, kill, or destroy fish in the said part of the said river, in such manner as is herein-before set forth by the said *James Morley*, he the said Sir *Henry Titchborne* was the true and lawful owner of the said part of the said river; and that the said *Harry Green* never had the consent of him the said Sir *Henry Titchborne* to take, kill, or destroy, or to attempt to take, kill, or destroy, any fish in the said part of the said river. And therefore the said Sir *Henry Titchborne* prayed, that upon the aforesaid information of the said *James Morley*, and upon the complaint of him the said Sir *Henry Titchborne*, the said *Harry Green* might be convicted in the penalty of five pounds, according to the form of the said statute. Whereupon, afterwards, to wit, upon the 9th day of *September* in the year aforesaid, he the said *Harry Green* appearing before us the said Justices in pursuance of our warrant, at *New Alresford* aforesaid in the county aforesaid, to make his defence against the said charge contained in the said information, and having heard the same read; and the said *James Morley* now also appearing before us the said Justices, and having been now again sworn before us the said Justices to the truth of his said information in the presence of the said *Harry Green*; and the said *James Morley* having now upon his oath declared, that at the time when the said *Harry Green* so as aforesaid attempted to take, kill or destroy fish in the said part of the said river, the said Sir *Henry Titchborne*

1784.

REX
v.
HARRY
GREEN,
Gent.

1784.

REX
v.
HARRY
GREEN,
Gent.

borne was the true and lawful owner of the said part of the said river; and that the said part of the said river then was the private property of the said Sir *Henry Tichborne*; and the said *Harry Green* having now in the presence of us the said justices asked the said *James Morley*, and also the said Sir *Henry Tichborne* who now also appears before us such questions, as he the said *Harry Green* thought proper, he the said *Harry Green* is asked by us the said justices; if he can say any thing for himself, why he should not be convicted of the offence charged upon him in form aforesaid: and because he the said *Harry Green* doth not nor can say any thing in his own defence touching or concerning the offence so charged upon him as aforesaid, and because all and singular the premises being fully heard and understood by us the said justices, it manifestly appears to us that the said *Harry Green* is guilty of the above-mentioned offence so laid to his charge as aforesaid, and because the said Sir *Henry Tichborne* hath now prayed that the said *Harry Green* may be convicted of the said offence so laid to his charge as aforesaid; It is therefore by us the said justices, upon the aforesaid information and evidence of the said *James Morley*, and upon the complaint of the said Sir *Henry Tichborne*, that the said *Harry Green* had not the consent of him the said Sir *Henry Tichborne* to take, kill or destroy fish, or to attempt to take, kill, or destroy fish in the said part of the said river (without any regard being had by us the said justices to the evidence of the said Sir *Henry Tichborne* that the said part of the said river was his private property) adjudged, that the said *Harry Green* is guilty of the aforesaid offence, and that he the said *Harry Green* be and he is hereby convicted of the said offence according to the form of the statute aforesaid. And we the said justices do award and adjudge, that for the offence aforesaid the said *Harry Green* hath forfeited the sum of five pounds of lawful money of Great Britain to be paid as the said statute doth direct to us the said justices, for the use of the said Sir *Henry Tichborne* as the owner of the said part of the said River, where the said offence was committed.

In Witness, &c.

Thomas Baker,
William Harris.

Upon a rule to shew cause why this conviction should not be quashed, *Lawrence* took several objections; and insisted, 1. That it is not any where stated upon the conviction, that Sir *Henry Tichborne* is owner of the *Fishery*: that it is at most only said, he is owner of the *River*, which does not amount to an averment, that

that he is owner of the fishery: that this is necessary to appear, as one man may be owner of the soil, and another owner of the fishery: that it was determined in the case of [a] *Smith v. Kemp*, that the owner of a several fishery has, but the owner of a free fishery has not, the soil: that is also so laid down in [b] *Blackstone's Commentaries*.

1784.
REX
v.
HARRY
GREEN,
Gent.

Buller J. It has been lately settled in the case of [c] *Lord Paget v. Mills*, upon looking into all the old authorities, that trespasses would lie against a lessee of a *River* for fishing in the *River*, though the water was expressly demised to him.

Lawrence. Then it does not as a charge even state, that Sir *Henry* is owner of the river: that it is true, that the witness in the recital of his evidence says, that he "knew Sir *Henry* was owner of that part of the *River*, because the witness had rented the *Fishery* of him:" that this is introduced as the witness's reason, but forms no part of the charge or adjudication: that it might be good evidence, but that that evidence comes too late; for it is after the conclusion of the charge.

2. That the information ought to have stated, that the offence was committed in some certain place, describing it; and negating that it is a park or orchard, &c. ~~as inclosed or~~ private property: that the act seems intended to prevent trespasses in the inclosures of other people and not to protect rivers in uninclused places; and that therefore in an open place it would have been no offence, and the spot might also have been the private property of the defendant, his own inclosed ground. But this objection was not noticed either by the bench or bar.

but alleging it
to be other inclosed
ground and

3. That the adjudication of the penalty was to Sir *Henry* as owner of the *River*, and not as owner of the *Fishery*.

Morris in support of the conviction, insisted; that, had it not been for the case of [d] the *K. v. Corden*, he should not have thought it necessary under that act of parliament to have stated, that this charge was the complaint of the owner: that Sir *Henry* appears sufficiently to have been the owner: that there was no technical

[a] *Tr. 4 W. & M. 2 Salk. 637.*

[b] 2. 39.

[c] *M. 21 G. 3. 1781.* The plaintiff had let a mill to the defendant "together with all streams of water, locks, sluices, &c. for driving and working the said mill, and for confining the waters necessary thereto, except the right and privilege of fishing in all the said waters, &c."

[d] *H. 9 G. 3. 1769. 4 Burr. 2279.*

1784.

REX
v.
HARRY
GREEN,
Gent.

form in which it was necessary to set this out; and that in substance it was so stated.

Lord *Mansfield*. The conviction must shew, that the justices have jurisdiction; and that has been done here. It is also necessary to shew, that Sir *Henry Tichborne* is owner of the fishery. Now the whole of the allegation, taken together, contains an averment of this fact, giving a reason for it: and whatever is alleged I take to be charge: for there is no occasion to allege any thing but for that purpose.

Willes J. The conviction states the offence to be committed in such a place, &c. "contrary to the form of the statute:" and there I say the charge ends: all besides is allegation only or argument. Then I read it, that the offence as charged is pointed against the defendant, only as attempting to take the fish against the consent of the owner of the river. But I think the last objection is decisive; for the penalty is adjudged to the use of the owner of the *River* and not to the owner of the *Fishery*: which the act does not authorize.

Ashurst J. The construction ought to be more strict upon convictions than upon indictments; and the reason is, because in the first case the jurisdiction is summary. A regular conviction should have charge, evidence and adjudication. The rule is first to state the charge, and then the evidence is to follow; and the evidence is not to extend [a] the charge. Here I agree with my brother *Willes*, that the information and charge end at the words "contrary to the form of the statute." And I am of opinion that the gist of the charge must be positively sworn to, and not appear only by argument and inference: and that here even the evidence is only argumentative, and not positive and direct; for it is, "that Sir *Henry Tichborne* is owner of the fishery, because the witness once rented it of him, and he has now taken it into his own hands."

Buller J. The Court in considering convictions is always strict in two or three points. 1. That a jurisdiction is shewn by the per-

[a] This was the opinion holden by Mr. J. *Ashurst* in the case of the *K. v. Wheatman*, E. 20 G. 3. 1780. *Doughl.* 331. where he says: "The evidence must prove, but cannot justify any defects in the information." It was a conviction on the game laws; and the objection was that the information did not specifically allege the necessary requisites. It was answered that it was sufficient, if this appeared in any part of the record, and that it did appear in the evidence as set forth. But per Lord *Mansfield*. This will not do. The defendant can be convicted only of the charge in the information; and that must be sufficient to support the conviction: and the conviction was accordingly quashed.

1784.

 REX
 v.
 SCOFIELD.

feloniously set fire to, burn and consume a certain house of one *James Ramsay* there situate (of which house he the said *John Scofield* was then possessed for a certain term of years then and yet to come and unexpired) on, &c. with force and arms at, &c. a certain lighted wax candle, which he the said *John Scofield* had then lately before set fire to and lighted did unlawfully wickedly and maliciously fix and put in a certain closet under and adjoining certain wooden stairs called the kitchen stairs in the aforesaid house of the said *James Ramsay*, which said house was then and now is situate and being in a certain neighbourhood and street there called *New Bond Street* and contiguous and adjoining to certain dwelling houses thereof, and belonging to divers of the liege subjects of our said lord the King : And that he the said *John Scofield* did then and there unlawfully wickedly and maliciously put and place about unto and against the said lighted candle so fixed and put by him the said *John Scofield* in the said closet as aforesaid divers matches and small pieces of wood and other combustible materials *with a wicked and malicious intention by means thereof then and there feloniously to set fire to the aforesaid house of the said James Ramsay* and to burn and consume the same to the great damage, &c.

The second count no otherwise varied the charge than by describing the house to be the *dwelling* house of the said *John Scofield*.

The third count stated that the prisoner set fire to certain matches and small pieces of wood &c. in a certain other house of the said *James Ramsay* &c. under certain wooden stairs &c. by means thereof feloniously to set fire to the said *last mentioned house* &c. : without stating, that it was in the possession of the prisoner, or that he had any term in it.

The fourth count charged the offence to have been committed in the same manner, in the house of the *prisoner*.

The fifth count charged an attempt to set fire to the house of the said *James Ramsay*, and

The sixth count an attempt to set fire to the house of the *prisoner*.

All the counts laid the offence to have been done *feloniously* ; but none of them charged an intent of setting fire to the adjoining houses.

The jury found the prisoner guilty.

Several objections had been taken at the trial, but Lord *Mansfield* declined giving any opinion upon them, declaring at the time to the prisoner's counsel, that they should have the full benefit of them before the court ; though some of them were not altogether objections
 in

1784.
 REX
 v.
 SCOFIELD.



meanor was punishable as a misdemeanor: that in an indictment at *Shrewsbury*, which charged the defendant before *Adams B.* with an attempt to suborn a man to commit perjury, it had been holden by all the judges, to whom the case was referred, that it was a misdemeanor; and the defendant received a heavy sentence: and that in the case of [a] *Bush v. Rawlins*, the giving of a bribe to forbear voting at an election for an adversary, though the party bribed did not forbear, was holden an offence.

Buller J.

That was made an offence by the [b] act of parliament.

Bearcroft. There is also the case of [c] the *K. v. Vaughan*, which was an attempt to bribe a minister to recommend to an office: and of [d] the *K. v. Johnson*, which was an attempt by an attorney to bribe a witness.

Lord Mansfield and Buller J.

It makes a great difference, whether an act was done; as in this case putting fire to a candle in the midst of combustible matter, (which was the only act necessary to commit a misdemeanor) and where no act at all is done. The *intent* may make an act, innocent in itself, criminal; nor is the *completion* of an act, criminal in itself, necessary to constitute criminality. Is it no offence to set fire to a train of gunpowder with intent to burn a house, because by accident, or the interposition of another, the mischief is prevented?

Cur. advisare vult.

Wednesday,
 Feb. 11.

And now *Lord Mansfield* delivered the judgment of the court.

After stating the indictment his Lordship observed, that the third count was clear of all possible objection; for there, without alleging that the house is in the prisoner's possession, it is said to be the house of *James Ramsay*; and, as it would have been a felony in the prisoner to have burnt such a house, the intent was there properly charged to be *felonious*. On that count therefore judgment might have been given; but, as on that the evidence did not support the charge, we shall found our judgment upon the first count.

Two objections have been made. 1. That this act is laid to have been done *feloniously*, and, as that word cannot be rejected, and no felony is charged, the defendant being the occupier of the house, the intent cannot have been felonious; and the indictment conse-

[a] Mentioned in 3 Burr. fo. 1236.

[b] 2 Geo. 2. c. 24. § 7.

[c] M. 10 Geo. 3. 1769. 4 Burr. 2494.

[d] 30 Car. 2. 2 Show. 1.

quently

quently is throughout bad: 2. that, if this word is rejected, the indictment will still be bad, as it will then charge no offence at all: it being merely an attempt to commit a misdemeanor.

1784.

REX

v.

SCOFIELD.

The defendant's counsel began by insisting upon what is now settled: that it could be no felony in the defendant to *burn* a house, of which he was in possession; and therefore that it could not be felony only to *intend* to do so: and so far is true. But they urge further, that the word "feloniously" cannot be rejected, and also that the defendant cannot be convicted of less than a felony, *i. e.* of a misdemeanor, when it appears upon the face of the indictment that a felony is charged; and so say they, there is no offence, and there can be no judgment.

This argument is a contradiction in itself; for it at the same time says, that a felonious intent is and is not charged. Where a particular intent is charged, the whole must be taken together, and the law must so judge of it. Here the intent charged is, that he feloniously attempted to burn his own house; but the law says, that is not a felony; and therefore, this being an averment repugnant to the legal import of the offence charged, the word "feloniously" must be rejected. To this the *King v. Holmes* [a], is an authority expressly in point: and, when examined and rightly understood, is not liable to the objection made to it by [b] Lord *Hale*, who states it thus: "A man indicted for felonious burning of a house, upon *not guilty* pleaded, a special verdict was found, it was adjudged no felony, as the case was found, yet upon the same indictment he was adjudged to the pillory, and fined 500*l.* and bound to his good behaviour, but *quære* of that case, for it seems unreasonable, because being tried for felony, he hath not those advantages for his defence, as if he were indicted only for trespass."

He supposes the case properly charged and that there was a special verdict, and that there the Court gave judgment as for another crime. Had the case been so, it might have well deserved the *quære* put by Lord *Hale*: But it is quite mistaken; for there was no special verdict. The jury found a general verdict of guilty. The indictment was removed here by *certiorari*, and there was nothing before the Court, but the indictment. The indictment charged, that *Holmes*, being possessed of a house in *London*, did feloniously set on fire his own house and burn it with intent to burn the houses

[a] M. 10 Car. Cr. Car. 376. Sir W. Jones 351.

[b] H. P. C. 2. 172.

1784.

REX
v.
SCOFIELD.

of others adjoining. The whole argument was confined to the question of what was charged in the indictment. The Court were of opinion, that notwithstanding it was charged to have been done "feloniously," it was only a misdemeanor, and they gave judgment as for a misdemeanor; the question being whether a felony or not? This is apparent in the report of the case by *Croke J.*; and in *Joyner's* case [a] in 1664 *Kelyng Ch. J.* and *Wylde J.* in differing from *Hyde Ch. J.* state, that in *Holmes's* case "all the special matter was expressed in the indictment." It is therefore a conclusive authority: and on principle and reason it appears to us to be most clearly right. This being so,

The next question is, Whether an act done in pursuance of an intent to commit an act, which, if completed, would be a misdemeanor only, can itself be a misdemeanor? It was objected, that an attempt to commit a misdemeanor was no offence: but no authority for this is cited; and there are many on the other side: as the case cited; of the *King v. Johnson*, the *King v. Sutton*, which [b] was an indictment for having in custody and possession stamps *with intent* to impress sceptres on sixpences, &c. And there the court say "lading wool is lawful; but, if it be with *an intent* to transport it, that makes it an offence. Here the intent is the offence; and the having in his custody, an act that is the evidence of that intent." But in the case of the wool, the transporting of it was only a misdemeanor, yet an act done to that end was holden indictable. In the *King v. Taylor*, the Court [c] granted an information as for a nuisance for keeping great quantities of gunpowder to the endangering of the church and houses where the defendant lived. There is also the case cited of the *King v. Samuel Vaughan*, which is founded upon the same principle as that of [d] the *King v. Plympton*; where it was holden that to bribe a corporator by money or promises to vote at corporation elections is an offence, for which an information will lie: the case of *Vaughan* was that of offering a bribe for an office, and if received, and the office procured, neither party would have been guilty of more than a misdemeanor: and it is laid down by the Court in the case of [e] the *King v. Langley* that words directly tending to a breach of the peace, are indictable.

[a] 16 Car. 2. Kel. 29.

[b] E. 10 G. 2. 2 Str. 1074.

[c] Tr. 15 G. 2. 2 Str. 1167.

[d] M. 11 G. 2. 1724. 2 Ld. Raym. 1377.

[e] H. 2 Ann. 2 Salk. 697.

There

There was a distinction made at the bar between an act done with an intent to commit a felony and an act done with an intent to commit a misdemeanor. In the degrees of guilt there is great difference in the eye of the law, but not in the description of the offence. So long as an act rests in bare intention, it is not punishable by our laws: but immediately when an act is done, the law judges, not only of the act done, but of the intent with which it is done; and, if it is coupled with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable. The case cited of the *King v. Sutton* is an express authority. We are therefore of opinion that the indictment is good.

1784.

 REX
 v.
 SCOFIELD.

Rule discharged.

Lord *Mansfield* then reported the evidence: and *Willes* J. pronounced the judgment of the court, which was, that the prisoner pay a fine of 300 *l.*, be imprisoned in *Newgate* one year and till his fine be paid; and that he give security for his good behaviour for 7 years, himself in 200 *l.* and two sureties in 100 *l.* each.

Rex v. Inhabitants of St. Andrew Holborn.

Saturday,
 Feb. 7.

TWO justices by an order remove *William Moore, Margaret*, his wife and their five children, from the parish of *St. Andrew Holborn* in the city of *London* to the township of *Aston juxta Budworth* in the parish of *Great Budworth* in the county of *Chester*. The sessions on appeal adjudge the settlement to be in the city of *Bath*, quash the order, and state the following case:

That the pauper, *William Moore*, was born in the township of *Aston juxta Budworth* in the parish of *Great Budworth* in the county of *Chester* (where his father resided for many years and till the time of his death) and that being thereby legally settled in *Aston* aforesaid, about the year 1760 became a yearly hired servant to Mr. *Squire*, an attorney in *Furnival's Inn London*, with whom he lived under such hiring about eight years: that the usual place of Mr. *Squire's* residence was in *Furnival's Inn*; but he used frequently to go to *Bath* for his health, where the said *William Moore* always accompanied him, and where his stay on such occasions was sometimes for four or five months together: that he was always in lodgings there, and generally on the South Parade in the parish of *St. James* in *Bath*;

Settlements may be acquired at publick places: and when a contract is made and the year's service entered upon, and also the last forty days of it performed in an extraparo-chial place, the pauper's settlement is in that vill in which the last of any intermediate forty days have been served under the contract.

and

1784.
 REX
 v.
 The Inhabitants of
 St. ANDREW,
 HOLBORN.

Settlement at
Bath.

Saturday,
 Feb. 7th.

and that during the latter part of the eight years aforefaid, that is to say, during the last three years thereof, the said Mr. *Squire* resided rather more at *Bath* than at *Furnival's Inn*; and, the last time the said *William Moore* was at *Bath* with him the said Mr. *Squire* stayed several months in his usual lodgings on the South Parade: that the said *William Moore* quitted the said Mr. *Squire's* service in May 1768, having resided with him about four months previous thereto in *Furnival's Inn*, that is to say from the preceding *Christmas* till the said month of *May*: that *Furnival's Inn* is an extra-parochial place; and that the said *William Moore* hath not done any act whereby to gain a subsequent settlement, either before he entered into, or since he quitted the service of the said Mr. *Squire*.

This case came first before the court in *Trinity Term* last, when some doubt having arisen, whether under the authority of a very particular case, that of [a] the *K. v. The Inhabitants of Alton*, a settlement could be acquired by any intermediate service, where the last forty days of the service were performed in an extra-parochial place, the Court wished to be further informed; whether *Furnival's Inn*, which had been stated to be an extra-parochial place, was or was not of such description, that it might be made a vill; and directed the case to be sent back to the sessions for that purpose.

That Court returned, that "*Furnival's Inn* is no township or vill within the meaning of the statute of the 13 & 14th years of the reign of the late King *Charles* the Second; and that no removal has been made to it."

And now *Silvester*, *Leycester* and *Heywood S.* shewed cause in support of the order of sessions; and insisted, that a removal to the birth-place of a pauper, as in the present instance, cannot be supported; if the pauper has at any period of his life by any act of his own acquired a settlement: that a pauper may be said to be hired in every place, in which during his year he serves; that the case of [b] the *K. v. The Inhabitants of St. Peter's in Oxford* was in point; that there the service began, and ended in an extra-parochial place, and yet an intermediate service in any place, was holden to give a settlement; and that consequently a settlement was here gained at *Bath*: that this must be so, unless a difference arose from the circum-

[a] E. 30 G. 2. 1757. Burn's Just. Ed. 1793, 3, 493. Burr. Settl. Caf. 418.

[b] Tr. 8 G. Str. 524. Fol. 194. Caf. of Settl. 105. 8 Mod. 49.

stance that *Bath* was a place of public resort: that this was a distinction not warranted by any authority, any more than it was by principle or the reason of the thing: that the words of the statute [a] were general: that it was highly unreasonable, that any such exemption should be claimed: that, if these places were sometimes subjected to an extraordinary burthen, they were much more than compensated by receiving at all times extraordinary benefits: that the *Scarborough* case, the *K. v. Alton* abovementioned, which seemed to establish this doctrine, had been denied in [b] the *K. v. the Inhabitants of Bath Easton*: that, if it were still urged, that the service in that case, finally closed in a place where a settlement might be acquired, such circumstance could not vary the law: that if the pauper had been in a capacity to acquire a settlement in *Bath*, and had there acquired one, such settlement could not be done away by a subsequent residence in another place, where none could be acquired: that the law knew no mode by which a settlement acquired in one place could be divested, unless by the acquisition of a subsequent one in another: that it was no more than if his master had taken the pauper abroad, or had removed with his family, from time to time, into so many different parishes at home, as never to have been resident in any one, for the space of forty days: that the case of [c] *Doulting v. Stokelane*, is in point: that the Court there says, "Suppose one go and live as a servant in an extra-parochial place, being neither town nor village, *would this discharge him of all other settlements?* As he shall not stay where he is not settled, so he must go where he is last legally settled, *where he could be sent.*" That the *Scarborough* case, from what is said of it in that of *Bath Easton*, was throughout to be taken as a determi-

1784.

REN

St.

The Inhabitants of
St. Andrew,
Holborn.

[a] 13 & 14 Car. 2. c. 12.

[b] E. 14 G. 3. 1774. Burr. Settlement Cas. 774. The judgment of the Court in this case was as follows. Lord Mansfield. Where the last forty days of his term are served, there is the settlement of the servant. It is immaterial to him where his master is settled. The *Scarborough* case was very particular: whatever may be said in general, must be understood to apply to the particular circumstances of the case before the court. A certificated man hired for a year could gain no settlement at *Elvetbam*, where he was certificated: at *Scarborough* they talk of a new hiring; and the master says, time enough, when we get home: there was only a *sejourning* for part of the time at *Scarborough* in the middle of the service: had he not been a certificated man, no doubt could have arisen. That case does not lay down a general law, as to public places; if so, it is certainly wrong.—*Alton* J. As public places derive so much benefit from the resort to them, there is greater reason that they should be charged, than that they should be eased of the burthen. *Willis* J. A *sejourner*, for forty days is the term used as one of the descriptions of persons who are enumerated as objects of removal under the statute 13 & 14 Car. 2. c. 12. in future therefore it may be understood, that settlements may be acquired by service in public places.

[c] H 11 Ann. Fort. 219.

1784.

Rix

v.

The Inha-
bitants of
St. ANDREW,
HOLBORN.

nation, founded upon its own numerous and very particular circumstances, or at most, as making an exception not to be carried farther than the case of certificated persons: and that this did not seem to be the rule in the case of apprentices, than which there could be none that bore a closer analogy to the present; for that there it had been determined in the case of [a] the *K. v. the Inhabitants of Petbam*, that a pauper residing under a certificate in one parish, and binding himself as apprentice in another to a master resident under a certificate (under which master he consequently could no more acquire a settlement there, than he could in an extra-parochial place) may yet acquire one on an assignment to a new master in any other parish; and was adjudged to have done so in the very parish, in which the pauper had himself been a person certified.

Bearcroft and *Dayrell*, in support of the rule to quash the order of Sessions, contended; that the *Scarborough* case precisely, and in every particular, corresponded with the present: and that, if it did not decide, that settlements could not be gained at public places, the point resolved must have been, that the settlement was defeated by the circumstance of the last forty days having been served in a place, in which a settlement could not be acquired: that this case confining the right of settlement to the place where the last forty days were served, to that place in the present instance no removal could be made; and there, consequently no such right could arise: that with a view to this point, whether a settlement could here be gained under such forty days, the case had been sent down to the Sessions to have it stated; whether, though at the time there were no parish officers appointed, *Furnival's Inn* was or was not a place, in which, under the statute 13 & 14 Car. 2. such appointment might be made: and that the *Scarborough* case was subsequent to that of *St. Peter's*, and a very deliberate and solemn judgment.

Lord Mansfield.

There were a variety of circumstances in the *Scarborough* case. It settles no general principles at all; and the fact of the servant being a certificated man, which is a statutable disability, was to be sure a material circumstance in that case.

On the re-statement it appears, that *Furnival's Inn* is no vill or township under the statute of Car. 2; but the hiring there was such a hiring as lays a foundation for a settlement, though it could not fix a settlement there. You must look back therefore to the last

[a] M. 14 G. 2, 1740. Burr. Settl. Cas. 154.

place, *Furnival's Inn* excepted (*i. e.* the last place where rights of this sort could have effect given to them) in which during the contract forty days were served. That place is *Bath*: and it having been now established, that settlements may be gained at public places, this pauper was settled at *Bath*, notwithstanding the *Scarborough* case.

Buller J.

Not a word has been said by the counsel for *St. Andrew* upon the principle of the decision in the case of *St. Peter's* in *Oxford*.

Rule discharged, and order of Sessions, quashing the order of Justices, affirmed.

1784.

Rex
v.
The Inhabitants of
St. Andrew,
Holborn.

Rex v. John Eyles Esqr.

Saturday
Feb. 7th.

TWO justices allow a rate, made for the relief of the poor of the parish of *St. Bridget*, otherwise *Bride's*, in the ward of *Farringdon Without* in the city of *London*.

Upon the appeal of *John Eyles* Esq. Warden of the *Fleet*, alleging that he is aggrieved, and that the said rate is not equal and equitable; inasmuch as he is rated as an occupier at and after the rate of 400 *l. per annum*, when he is in fact an occupier of one messuage or tenement of the yearly value of 40 *l.* and no more, the Sessions at the *Guildhall* in the city of *London* confirm the rate, and state the following case:

That his present Majesty, by virtue of his letters patent bearing date the 5th day of *March* in the first year of his reign, gave and thereby granted unto the said *John Eyles* the said office of Warden or keeper of the *Fleet*, and the custody of the prison and gaol of the *Fleet*, situate and being in the parish of *Saint Bridget*, otherwise *Saint Bride's*, without *Ludgate, London*, and of the prisoners committed or to be committed to the prison and gaol of the *Fleet* aforesaid, and the capital messuage for the custody of the prisoners, and thirteen messuages in the parish aforesaid, and all other messuages, lands, tenements, and hereditaments to the said office belonging and appertaining; and all those rents or annual payments, issuing from and out of the messuages lands and tenements, within the said city of *London* and suburbs of the same to the said office and custody of the prison and gaol of the *Fleet* aforesaid belonging and appertaining; and all the other fees, salaries, rents, profits, emoluments, commodities, privileges and hereditaments to the said office and prison, and to the keeper or custody of the same or either

The warden
of the *Fleet* is
rateable to
the poor, as
occupier, for
his profits
upon the
lodgings of
the prisoners.

1784.

Rex

v.

EYLES.

of them in any wise belonging or appertaining; and him the said *John Eyles* Warden or keeper of the *Fleet* and of the prison and gaol of the *Fleet* aforesaid did make and constitute by the said letters patent, To have hold and exercise the said offices, messuages, lands, tenements, rents, annuities, fees, salaries, liberties, profits, advantages and hereditaments aforesaid, and all and singular other the premises aforesaid, with their and every of their appurtenances, unto the said *John Eyles* by himself, or his sufficient deputy or deputies, for whom he should be answerable, for and during the will and pleasure of his Majesty his heirs and successors, in as ample a manner and form, as his father *John Eyles* deceased, or any other Warden of his said Majesty's prison of the *Fleet* aforesaid, and keeper of the palaces at *Westminster* aforesaid or either of them, heretofore had, held, used or enjoyed, or ought to have had, held, used or enjoyed, the said offices, and other the premises aforesaid, or any or either them: and it further appears to this court in evidence, and is admitted by all parties, that the thirteen messuages mentioned in the said letters patent, have since the date thereof been reduced in number to nine distinct tenements, or messuages, the occupiers of which are respectively assessed and rated in the parish books, and are not included in the above complained of rate; and that part of the capital messuage in the said letters patent mentioned consists of certain rooms in which the prisoners, committed and detained in the said prison, in the custody of the said *John Eyles*, as Warden, are lodged; who severally and respectively pay to the said *John Eyles* as Warden the weekly sum of one shilling and threepence for each of the said rooms, when occupied in the said prison; and that a certain other part of the said capital messuage is used as a separate dwelling house, for the residence of the said *John Eyles*, as Warden, and occupied by him his family or servants; and which said last-mentioned part, is of the yearly value of 40 l. *And that the present Warden and his late father have constantly paid to the poors rate for the said prison at the rate of 300 l. per annum, until within a few years last past; when, upon the raising of the said rate to the sum of 400 l. the Warden first objected to the payment thereof; and that the whole of the capital messuage, as well that part occupied by prisoners as aforesaid, as that other part occupied by the said John Eyles, his family or servants as aforesaid, is generally rated in the aforesaid assessment; and the said John Eyles, was assessed thereunto, and in respect thereof.*

This

This case came before the court in *Easter Term* last, when it was sent back to the court of quarter Sessions, to have the fact stated whether the usage had been, to rate the whole prison.

And now *Wilson J.* and *Rose* shewed cause in support of the order of Sessions confirming the rate; and *Wilson J.* insisted, as there could be no doubt, but that he would be liable to this charge, if the grant had been to the Warden generally, and without any purpose expressed, that it was in vain for him to contend, that he was discharged; because he is obliged to receive prisoners, and restrained from taking more than 1 s. and 3 d. [a] a week: that this is very far from establishing that he is not the occupier, as it is no more than a direction for the good of the Public, that he shall occupy in that particular manner: that at most it could only go to the quantum of the rate, against which the appellant did not appear to complain: and that, if he was not the occupier, there was clearly no other: that where a certain annual profit to the amount of 400 l. arises out of lands and tenements, and nobody else is rateable, there is no instance, or can there be any plausible pretence, that the person receiving the profit shall not be charged. That in the Hospital case [b] nobody received profit or rent: that the use and enjoyment there was solely in the objects of a charity: that here, when the rooms are not occupied by the prisoners, the Warden may, if he please use them in any other way: that this case is like that of a lodging house or rather a spunging house; in which cases the landlord is rated for the whole house: that the case of [c] *Robson v. Hyde*, was in point: that there the tenant was restrained from occupying in any other way, than for the purposes of divine service; and yet, as he had made a profit of his pews, he was holden rateable for their produce, although nobody had ever been rated, for this species of property before; and that there was as little reason to say that the prisoners could be considered as occupiers here, as that the keepers of pews, could in that case be so holden. That the opinion of the Chief Baron and other Judges, [d] (the two Chief Justices and

1794.

Rex

v.

EYLES.

Saturday

Feb. 7th.

1784.

[a] The St. 8 & 9 W. 3. c. 27. § 14. restrains the Marshal of the King's Bench, and Warden of the Fleet, from taking more than 2 s. and 6 d. a week, under a penalty of twenty pounds; and by a subsequent act, 2 G. 2. c. 22. § 4. power is given to certain magistrates to establish the sum to be taken, and they by an order dated May 19th, 1729, directed that where the Warden of the Fleet shall find bedding and furniture he shall be permitted to take 2 s. 6 d. per week; but otherwise no more than 1 s. 3 d.

[b] Tr. 9 G. 3. 1769. Rex v. the Inhabitants of St. Bartholomew the Less, 4 Burr. 2435.

[c] Tr. 23 G. 3. 1783. ante 310.

[d] Skinner, Ch. B. Gould, Willes, Ashurst, Blackstone and Nares, Justices; and Eyre, Hotham and Perryn, Barons.

1784.

REX
v.
EYLES.

Bulter J, excepted) given to the commissioners of the window tax; that the Marshal was not liable to be rated for the windows of the King's Bench prison, had been urged; but that the two acts had no connection with each other: that the phrase of that act [a] is "dwelling house:" that, if the Marshal's right and that of his family had been confined within the limits of that part of the building, which was his usual residence, and the other part had been allotted exclusively to prisoners, such part would not have been properly a dwelling house; and that it might probably have been so considered by the judges: that the two acts were procured with very different objects in contemplation; and that many buildings, which would not fall within the provisions of the window tax, would be indisputably rateable, under the more comprehensive scheme of taxation for the poor.

Rose also insisted, that the only question was, whether a profit was made? That, if there is, though the houses, appropriated in prisons to public officers, are as necessary to the public service as the wards, yet they must be liable: that such is the principle of the decision in the case of [b] the *K. v. the Occupiers of St. Luke's Hospital*; and that the principle was the same in the case of [c] the *K. v. Matthews*, the occupier of one of the royal lodges at *Windsor*; as well as in those of [d] the *Cheltenham Spa*, and [e] the *Gloucester engine house*; and that there could be no difference between the wards and his own house in point of liability, as he had the controul over the whole prison, and let the wards for a certain sum.

Lord Mansfield now calling upon the other side,

Bearcroft and *Silvester* argued in support of the rule to quash the order of Sessions, confirming this rate: and *Bearcroft* contended, that, the use and application of these premises, which was for the public service, seemed to exclude the idea of an occupation by any individual whatsoever: that it was not an exemption of this property that was here insisted upon; for there may be a subject rateable, and yet no person in respect of that subject to be rated: that such was a late case, that of [f] the *K. v. Waldo*: that it is not sufficient to find house or land, an occupier must also be found: that in

[a] 6 G. 3. c. 38. § 2.

[b] M. 1 G. 3. 1760. 2 Burr. 1053. 1 Blackst. 249.

[c] H. 17 G. 3. 1777. ante 1.

[d] Tr. 17 G. 3. 1777. Rex v. Miller, Cowp. 619.

[e] E. 23 G. 3. 1783. Rex v. Inhabitants of St. Nicholas Gloucester, ante 262. And vide Rex v. Hogg, E. 27 G. 3. 1787. Ib. 266.

[f] Tr. 23 G. 3. 1783. ante 358.

the

the case of [a] *St. Luke's Hospital*, there was a house inhabited, but nobody who could be considered in the character of occupier; although no doubt, the legal estate was in some trustee: that merely to say that if this person cannot, no other person can be rated, is therefore to say nothing: that the warden is here in like manner a trustee, and that the grant to him, was for the purpose of keeping the prisoners. That the opinion of the judges in the case of the commissioners of the window tax, *November 18th 1779*, is an authority, that closely applies to the present: that that case states, that the act directs the rates to be charged on [b] the "inhabitants or "occupiers of dwelling houses"; and the commissioners adjudge, that the house of *Benjamin Thomas*, Marshal of the King's Bench prison, and the house of his officers and servants, are properly rated for 51 windows in his and their dwelling houses; and that the windows within the said prison, are not rateable to the said tax: that, if the Marshal of the King's Bench was not an occupier of the windows of the King's Bench, as an inhabited dwelling house, no more was the Warden of the *Fleet* an occupier of a house: that it was true, that it was not expressly stated in that case, that a profit was made by the Marshal; but that this was a fact of so very public notoriety, that, it was not possible that it could be unknown to the judges: that, as to former acquiescences, the Court cannot determine a general question upon one man's admission: that the case of *Robson v. Hyde* was very different: that the property there was taken to be in the nature of a rent, and that the tenant had the intire dominion and occupation.

Silvester also contended, that, with respect to the occupation, every prisoner as to this statute, was the occupier of his own room: that the weekly payment which he makes to the Warden is not a rent, but a perquisite of office: that the property of the prison is in the crown, the custody of it only in the keeper or Warden, and the occupation in the prisoners: that the Marshal of the King's Bench prison must be taken as having the same perquisite; for, as his prison is a part of this court, and his weekly allowance is paid by it, the Court must notice it, though the case does not expressly so find; and then this case falls within the resolution of the judges upon the window tax act: that he is bound to receive the prisoners, whether they can pay or not: that he has no power of distress: that, if they

1734.

REX
v.
EXCES.

[a] M. 1 G. 3. 1760. 2 Burr. 1053. 1 Blackst. 249.

[b] The words of the stat. 6 G. 3. c. 38. § 2. are "there shall be charged and paid for every dwelling house inhabited, &c."

1784.

~
 REX
 v.
 EYLES.

pleat dwelling house as to all the windows: but here the Warden is not rated merely as inhabiting a dwelling house, but as occupying a tenement, a property yielding profit: and usage is coupled with the general principle of rateability.

Ashburst J.

There is no foundation in justice, or even any technical reason for not rating this property. It is largely productive: and I am of opinion that it is in the occupation of the Warden.

Buller J.

I have not the least doubt, but that this question arose out of the window tax determination; to say the best of which, it was a very merciful one. But it does not govern this, or apply to any case upon the poor laws. The whole of it is, that in taxing lights in houses the Legislature did not mean to rate any occupier for that which was not a compleat dwelling house, as to all its windows; and this is not a rule, but upon this particular statute. I had no doubt upon this case as it stood before; and think the Warden ought to be rated, independant of the circumstance of usage. Usage may be material to explain facts, but never can controul the words or meaning of an act of parliament. The question whether prisoners are occupiers, was much agitated by the judges in the case of [a] the *K. v. Donnevan* from *Liverpool*; and they were all of opinion, that they were not, but like lodgers, or more like them than any thing else. They cannot continue there, as long as they please. But, taking them as lodgers, no lodger, though possessing the principal part of the house, was ever rated; but the owner, how small soever the part reserved for himself, is in the eye of the law the tenant of the whole, and is rated as the occupier. *Robson v. Hyde* is strongly applicable. In many houses in *London* the mode of occupation is restrained; as not to use trades, &c. As to this payment being a fee of office, nothing can be so decisive as the words of the rule of court, restraining the quantum to be taken. It is there called *chamber rent*.

Rule discharged and order
 of Sessions, confirming
 the rate, affirmed.

[a] E. 10 G. 3. 1770. 2 Blackst. 682.

Easter Term

1784.

24 Geo. 3. 1784.

Rex v. Robert Lloyd & al'.

THIS was an indictment for a forcible entry tried at the last assizes for the county of *Salop*, before *Buller J.*

It stated, that “*James Lloyd* late of *Soughton* in the parish of *Llanfelin* in the county of *Salop*, Gentleman, on &c. in &c. was possessed of a certain messuage and tenement with the appurtenances, situate &c. in *Soughton* aforesaid in the parish of *Llanfelin* aforesaid in the county aforesaid, for a certain term of years then and still to come and unexpired, and, being so possessed thereof, one *Robert Lloyd*, Gentleman, &c. all late of the parish of *Llanfelin* aforesaid, in the county aforesaid, afterwards, to wit on the said 28th day of *March* in the year aforesaid, into the said messuage and tenement with the appurtenances aforesaid in the parish aforesaid in the county aforesaid with force and arms and with strong hand unlawfully did enter (the said messuage and tenement with the appurtenances being then and there the freehold of *Joseph Phillips* in the possession of the said *James Lloyd*) and the said *James Lloyd* from the peaceable possession of the said messuage and tenement with the appurtenances aforesaid and then and there with force and arms and with strong hand unlawfully did expel and put out, and the said *James Lloyd* from the possession thereof, so as aforesaid with force and arms and with strong hand being so unlawfully expelled and put out, the said *Robert Lloyd*, &c. him the said *James Lloyd* from the aforesaid 28th day of *March* in the year aforesaid until the day of taking this inquisition, from the possession of the said messuage and tenement with the appurtenances aforesaid, with force and arms and with strong hand, unlawfully and injuriously then and there did keep out and still do keep out, to the great damage of the said *James Lloyd*.”

In an indictment for a forcible entry upon the possession of a lessee for years, proof of the force and of such possession is sufficient; although the indictment also alleges, that the premises were the freehold of *A.* and such allegation is not proved.

1784.

R. E. X.

v.

LLOYD.

Lloyd, and against the form of the statute in that case made and provided."

It was objected at the trial, that no proof had been made on the part of the prosecution, that the house was, as stated in the indictment, the freehold of *John Phillips*; and evidence was offered on the part of the defendant, to contradict this allegation. The learned judge refused to admit this proof of the negative; and, being also of opinion that it was not incumbent on the prosecutor to establish the affirmative, the force being the gist of the charge, directed the jury; if they were satisfied with the proof of that fact and of *James Lloyd's* possession as lessee, to find the defendants guilty: and the defendant *Robert Lloyd* was accordingly convicted.

Saturday
May 1st.

And now on a rule to shew cause, why a new trial should not be granted (*inter alia*) upon the ground of this mis-direction, *Baldwin* insisted that the prosecutor, having made an allegation, not as matter of inducement, but in that which was the substance of the charge and constituted the description of that very property upon which the force and injury was committed, and having failed in substantiating this fact, the defendant was intitled to an acquittal.

Lord *Mansfield*.

It was immaterial. Though stated in the indictment, it need not be proved. On this ground therefore,

Per Cur.

Motion denied.

Friday
June 1st.

In the next term, the rule for a new trial upon the other grounds having been discharged, and possession of the premises having been delivered to the prosecutor, a small fine was imposed on the defendant.

Rex v. the Inhabitants of Ashton Underhill

and

Rex v. the Inhabitants of Charlton.

Though the
limitation in
the premises

TWO justices by an order remove *John Drinkwater*, *Mary* his wife and their seven children, from the hamlet of *Charlton* cannot in general be controuled by the habendum in a deed, it may by a subsequent declaration of uses. A conveyance after marriage, of an estate under the value of 30*l.* by the wife's father to the husband only, but intended for the use of both husband and wife and made in consideration as well of the marriage then had as of natural love and affection to both, is not a purchase within st. 9 G. but gives a settlement.

in

in the parish of *Croftborne* in the county of *Worcester* to the parish of *Ashton Underhill* in the county of *Gloucester*. The Sessions on appeal adjudge the settlement to be at *Charlton*, quash the order, and state the following case.

That the pauper, *John Drinkwater*, being then legally settled at *Ashton Underhill*, intermarried with *Mary*, the daughter of *Robert Plevon*; who, being seised in fee (*inter alia*) of the plot of ground hereinafter mentioned and described, after such marriage, by an indenture of feoffment made in the year 1767 between the said *Robert Plevon* of the one part and *John Drinkwater* and *Mary* his wife, daughter of the said *Robert Plevon*, of the other part, in consideration of the marriage then lately had and solemnized between the said *John Drinkwater* and *Mary* his wife, the said daughter of the said *Robert Plevon*, and for the regard and natural affection which he the said *Robert Plevon* had and bore unto the said *John Drinkwater* and *Mary* his wife, and also for and in consideration of the sum of ten shillings of lawful money of *Great Britain* unto the said *Robert Plevon* in hand paid by the said *John Drinkwater* at or before the sealing and delivery of these presents, the receipt whereof the said *Robert Plevon* did thereby acknowledge, and for divers other good causes and valuable considerations him thereunto moving, did give grant alien enfeoff and confirm unto the said *John Drinkwater* his heirs and assigns, All that plot of ground or garden containing twenty yards square or thereabouts, (more or less) situate in *Charlton* in the county of *Worcester*, on which or some part thereof the said *John Drinkwater* then intended to build a dwelling house, together, &c. To hold unto the said *John Drinkwater* and *Mary* his wife their heirs and assigns, To the only proper use and behoof of the said *John Drinkwater* and *Mary* his wife, their heirs and assigns for ever: on which deed livery of seisin is indorsed. It further appeared in evidence, that, although ten shillings is mentioned in the deed, yet neither that nor any other consideration whatsoever was paid, or agreed to be paid by the said *John Drinkwater* to the said *Robert Plevon*; but that on the contrary the said *Robert Plevon*, the father in law, offered to give the said plot of ground to the said *John Drinkwater* to build him a house for him and his wife to live in, and he the said *Robert Plevon*, being a carpenter, promised to do all the carpenters work, and find timber to be used in the building of the intended house, and did actually find and provide the necessary timber, and did the carpenters work gratis for the said *John Drinkwater* and his wife; and he the said *John Drinkwater*,

1784.

REX

The Inhabitants of
ASHTON
UNDER-
HILL.

1784.

REX

The Inhabi-
tants of
ASHTON
UNDER-
HILL.

Settlement at
Charlton.

July 7th.
1783.

Thos. May
Feb. 12th.

Drinkwater, being a bricklayer, did the business of the bricklayer and plaisterer: that the said *John Drinkwater* entered upon the said messuage and land, and lived in and enjoyed the same for the space of ten years and upwards: that about four years ago he the said *John Drinkwater* and *Mary* his wife joined in and levied a fine and mortgaged the same premises for thirty pounds; and about two years ago sold the same for forty guineas to one *Baldwin*, who is now seised of the said messuage and premises in fee: it also appeared further in evidence, that the plot of ground at the time of the conveyance thereof to the pauper as aforesaid, and before the house was built thereon, was not worth more than one guinea: And that there was no promise or agreement whatsoever before the pauper's marriage to convey the said plot of land.

In this case, which at the *Epiphany* sessions *January* 14th 1783 was found special, as above stated, suspicions arose on the part of the parish of *Ashton Underbill*, who had succeeded below, in consequence of no steps having been taken by the hamlet of *Charlton* to remove it into the King's Bench, either in the ensuing *Hilary Term* or vacation following; and, as the stat. 13 G. 2. c. 18. § 5. limits the application for *certioraries* to remove orders of justices within six calendar months next after such order made, upon search it was discovered, that the clerk of the peace had in his minute and book of orders entered, that, subject as above, the appeal had been confirmed. It became necessary therefore, to prevent the parish of *Ashton Underbill* from being concluded by this false entry of the officer, for that parish to remove the orders: the recognizance was accordingly entered into by them, and the *certiorari* moved for in the name of the K. v. the Inhabitants of *Ashton Underbill*. The clerk of the peace made his return according to the truth of the fact, stating that the order of two justices had been quashed by the sessions.

And now for the purpose of preventing the expence of the recognizance by them entered into, and the burthen of costs in the event of their not succeeding, from falling upon them, which by the statute 5 G. 2. c. 19. § 2. the parish of *Ashton* would otherwise have been subjected to, *Caldecott* obtained a rule to shew cause, " why the *certiorari* lately returned into this court with the orders should not be considered to have issued at the expence of the hamlet of *Charlton*, and also why they should not enter into a recognizance to pay to the inhabitants of the parish of *Ashton Underbill* their full costs and charges, to be taxed according to the course of the

the court, if the order made by the Quarter Sessions against the said hamlet of *Charlton*, shall be confirmed:" and it was directed by the Court that both cases, this on the preliminary point of costs, as well as that on the right of settlement, should stand in the paper on the same day.

And now, the rule in the *K. v. the Inhabitants of Ashton Underbill* having first been made absolute without opposition, *Wilson J.* and *Caldecott* shewed cause in support of these orders; and insisted, that the stat. 9 G. c. 7. § 5., made for the purpose of preventing settlements being acquired by purchases under 30 *l.*, had in construction been restricted to purchases for a money consideration: that it not only would have been unreasonable to have carried it beyond, and extended it to moral considerations, but also against the express words of the act; for the only purchases spoken of there are pecuniary, those for which money was to be paid; and that the object of the legislature, was to prevent the churchwardens and overseers of one parish, from giving small sums of money to their paupers for the purpose of purchasing little plots of ground in another; and so transferring the burthen of their maintenance: that, wherever there appeared a substantial, *bona fide*, consideration, it must be sufficient; as in such case it did not at all interfere with the object of the Legislature, which was solely directed against fraud: that the money consideration, which appeared on the face of the deed, even if the payment had not been negatived, was nominal merely, and in compliance with the forms of conveyancing; but that a marriage *bona fide*, such as the present, was a consideration, that did not admit of fraud, and could not therefore be within the mischief meant to be remedied by the statute: that, the adjudications, in which leasehold, customary and freehold estates under the value of 30 *l.* purchased by the wife previous to marriage, or given to her after marriage, have been holden to intitle the husband to a settlement, are very numerous: viz. the *K. [a] v. the Inhabitants of Marwood*; the *K. [b] v. the Inhabitants of Ingleton*; the *K. [c] v. the Inhabitants of Ilmington*; and the *K. [d] v. the Inhabitants of Bryngwyn*; and that if the case of *[e] the K. v. the Inhabitants of Sabridgeworth* should be insisted upon on the other side, it was a

1784.

REX

The Inhabitants of
ASHTON
UNDER-
HILL.

Wednesday,
May 5th.

[a] H. 29 Geo. 2. 1756. Burr. Settl. Caf. 386.

[b] E. 6 G. 3. 1766. Burr. Settl. Caf. 560.

[c] Tr. 6 G. 3. 1766. Burr. Settl. Caf. 566.

[d] H. 13 G. 3. 1772. Burr. Settl. Caf. 725.

[e] H. 3 G. 2. 2 Sess. Caf. 161. and cited in a case in Burr. Settl. Caf. fol. 56.

1784.
 Rex
 v.
 The Inhabi-
 tants of
 ASHTON
 UNDER-
 HILL.

decision prior in point of time to the authorities, which have fully [a] established the contrary doctrine: but, independent of all these authorities in which the husband derives title through the wife, to whom the estate was given or by whom it was purchased, that, if the principle of these authorities, that the common law right of acquiring settlements by residence upon one's own property, where such property is obtained without any pecuniary consideration and *bona fide*, can be [b] supported, the pauper's title to a settlement in *Charlton* was unquestionable: that, if this were so, the question was concluded, whatever might be the opinion of the court upon an argument, that had been used below, drawn from the form of the deed; by which, in the premises, an estate was given to the husband only: that from hence it had been contended, that though there was a limitation to the wife in the *habendum*, yet she could not under such limitation take any thing; because it was impossible that the *habendum*, could by any legal operation narrow the limitation in the premises: but that, though this is generally true, this was not all; for, in the limitation of the use, which immediately followed, both husband and wife were named: that this since [c] the statute of uses was sufficient to give them both an estate at law, (the statute executing the use) as it would have been sufficient in equity before: that, the statute transferring the use into possession, just as if it had passed by the feoffment itself, the effect was to give a joint estate to the husband and wife; and that then, this interest, this estate of which he would have been seised *jure uxoris*, would by operation of law have given him a settlement: that it would not be too much to contend, that she as well as her husband was intitled as tenant in tail only, according to the antient cases [d] of estates given in frank-marriage, though not named before the *habendum*, in contradiction to the general rule; and that the husband might in this way also claim a moiety in right of his wife.

Bearcroft and *Welch* in support of the rule to quash the orders contended; that all that the Court had hitherto determined, was, that, where there was a conveyance of an estate to a wife and it then

[a] And so in a very late case, the *K. v. the Inhabitants of Upton*, E. 29 G. 3. 1789. 3. Durnf. and East. 251.

[b] In the case last cited a conveyance by a father to his son, though in consideration of ten pounds, the value of one fifth of the premises, as well of natural love and affection, was holden not to be a purchase within the statute and to give a settlement.

[c] 27 H. 8. c. 10.

[d] Co. Litt. 212.

passed:

passed by operation of law to the husband, such acquisition of property was not a purchase by the husband within the statute; but that in the present case the husband took by grant, and not by operation of law: that it was a purchase of the husband alone, who derives his estate from the grantor without any participation of the wife. Then is not such taking by the husband within the statute? That it was a taking by the husband alone is clear, if the grant conveys nothing to the wife: that the premises are here limited to the husband and his heirs; and that it is settled in [a] *Baldwin's* case, that the *habendum* cannot controul or lessen an estate expressly given by the premises: that the *habendum* aims at this, by giving a jointenancy in fee, but is therefore repugnant and so void: that the uses which follow are exactly the same as those in the *habendum*; so that they cannot contribute any more than the *habendum* towards narrowing the premises: that, if the *habendum* is void, the subsequent use limited upon it must be void also: that therefore, whatever benefit might be meant to the wife, as she took no legal estate, as the property was conveyed to the husband alone, such feoffment to him could enure only to the use of the grantor and his heirs: that this deed could not, for want of consideration, convey any interest to this grantee; for that natural love and affection to a son in law, one not of the blood of the grantor, could not raise a consideration to such grantee in a feoffment made after marriage: that, as to the argument, that, by the subsequent limitation of an use, a moiety passed to the wife, this might have been true, had the use been well limited; as *habendum* to *the husband* and his heirs, to the use of the *husband and wife* and their heirs; for there must be somebody to stand seised to the use for an instant, and the persons to stand seised and those to whom the use is given cannot be the same: that, under the construction contended for, this would be the case; but that the rules of law would not admit of it: and that, though a case may exist, in which natural love and affection, as here, may be a consideration sufficient to support a covenant to stand seised to uses, it can then only be so, when the deed cannot otherwise have any effect; whereas in this case there was a good resulting use to the grantee and his heirs. They also added, that, as the premises were stated to have been of the value only of a guinea, the formal conveyance of so small a property could only have been made for some secret purpose, and as a cover for frauds.

1784.

REX
v.
The Inhabitants of
ASHTON
UNDER-
MILL.

[a] 2 Rep. 23.

1784.

REX
v.
The Inha-
bitants of
BRIGHTON
UNDER-
HILL.

Willes J.

The question in this case seems to be, whether the husband took an estate in his own right or that of his wife by purchase, within the meaning of this act. In its true construction, this act meant only a purchase for money, or some other such valuable consideration. This not being such, if the husband and wife take any thing by this feoffment, they gain a settlement; and it is agreed, that if the husband took through his wife, there can be no question. Now here is a manifest intention to benefit the wife. From every part of the deed as well as the facts stated, it appears to have been a conveyance grounded on natural love and affection; subsequent indeed to the daughter's marriage, but expressly mentioning it as a consideration. Nothing throughout the transaction leads towards the idea of a pecuniary purchase. The sum inserted is according to the course of conveyancing.

But it is argued, that under this conveyance, as it is framed, although the intention was to give a joint estate, the wife takes nothing. Now, though it was first given to the husband only and the *habendum* cannot controul the premises, the subsequent uses, which are declared, may. To this it has been answered, that if the *habendum* is to be rejected as repugnant and therefore void, the uses must fail also. But this is not so: for, if we reject the *habendum* altogether, it will run to the husband and his heirs, to the use of the husband and wife and their heirs; which will be a good limitation of an use, and make the deed a perfect legal instrument.

But, putting the deed out of the question as to the estate to the wife, on the true intent of the parties, I consider this as a gift to the husband; and not a purchase within the act, which relates only to money considerations.

Ashurst J.

Taking this as a feoffment, I am not clear, whether it might not be good to raise an use in a moiety to the wife. But it is not necessary to consider it in that light. The rule in construing all deeds is, that they should have effect given them, if possible; and if they cannot operate to the end intended, if they are meant to operate in one way and cannot, they shall in another. Here then the grantor most clearly meant to give a joint estate in fee to husband and wife; but, if it is true, that as no money was paid, this conveyance, being a feoffment in fee to the husband only without consideration, would in this view of the case result to the use of the grantor, still, if to the manifest intent of the grantor the natural love and affection expressed.

pressed in the conveyance is added, the use will not result; but the deed may be considered by the Court, as being in effect a covenant to stand seised to the use of the husband and wife and their heirs.

Buller J.

I doubt much, whether the Court ought to take notice of the fact stated, that no money was paid. We know, that in all family settlements the nominal consideration is inserted, in order to make the deed valid, though in fact it is never paid. To admit evidence against the receipt, or even enter into such inquiries, would be dangerous to titles in general; and hardly any conveyance in the kingdom, made to trustees, would stand. It is generally true, that the *habendum* shall not controul the limitation in the premises; but it is inconsistent, as they have argued in support of the rule, to say that the *habendum* must be rejected, because repugnant to the prior limitation, and yet that the deed shall not receive the same construction; as if the repugnant clause had not been introduced: for that then the legal effect of the whole is a limitation, admitted to be good; *i. e.* a conveyance to the husband and his heirs to the use of the husband and wife and their heirs: and words that have no operation ought to be rejected to give effect to the apparent intent of a deed. But, let the words of the deed be what they may, the true point in this case is the general question, whether this is to be construed a purchase within the act? Now it has been settled, that this act extends only to pecuniary purchases, and that its object was to guard against small transfers for money considerations, and so prevent frauds on parishes. It is expressly so considered by *Wilmot J.* in the case of [a] the *K. v. the Inhabitants of Marwood*. The statute therefore cannot possibly apply to a conveyance like the present, which is a transfer of a family estate from one branch of the family to another; in which the particular facts as well as the general nature of the transaction negative all idea of fraud.

Lord *Mansfield* was absent.

Rule discharged and order
of Sessions quashing the
order of justices,
Affirmed.

1784.

REX
v.

The Inhabi-
tants of
ASHTON
UNDER-
HILL.

[a] H. 29 G. 2. 1756. Burr. Settl. Caf. 386.

1784.

Rex v. the Inhabitants of Alton.

TWO justices by an order remove *Benjamin Johnson* and *Mary*, his wife, from the parish of *Midhurst* in the county of *Sussex* to the parish of *Alton* in the county of *Southampton*. The Sessions on appeal adjudge the settlement to be at *Alton*, confirm the order, and state the following case:

During a contract as a menial servant for a year, a new agreement to work in the same species of labour by the piece and find himself lodging as well as all other necessities (the servant afterwards at times serving in his master's house and being there) does not prevent his gaining a settlement. Settlement at *Midhurst*.

Wednesday,
May 5th.

That the pauper *Benjamin Johnson* was a settled inhabitant in the parish of *Alton*: that, subsequent to the settlement, the pauper hired himself to his uncle, *Daniel Johnson*, a turner, in the parish of *Midhurst* for a year; and the pauper was to be found in board, lodging, pocket money and cloaths by his uncle, for whom he was to work in his trade of a turner, and his master was to have the benefit of his work: that after the pauper had served six months his master finding he was idle, and did not work as he ought to have done, he and the pauper came to a new agreement, and the pauper was by such new agreement to work in the said trade, by the piece, and he was to be paid in future by the piece for what he should earn; and was also to find himself in board, lodging, pocket money and cloaths: and upon these last mentioned terms he continued with his master till the end of the year; sometimes working by the piece lodging and boarding out of his master's house, and at other times serving in the house as a servant, when he was boarded and lodged by his master.

Bearcroft shewed cause in support of these orders; and contended, that, though the Court had decided, that two hirings, provided one was for a year, might be coupled and would give a settlement, yet that this was so only, where they were hirings *ejusdem generis* and where there was a continuance of the same service: that the species of service was different in this case, the pauper being under one hiring a menial servant by the year in constant employ at annual wages and supported by his master, in the other working only by the piece, living out of the house, and providing himself with every necessary article: that such contracts and services could not connect: that by the terms of the second hiring the pauper was under no obligation to work exclusively for his master, who could not command the whole of his service; and that therefore being by this contract

contract *sui juris* and not under his master's controul, he was no servant at all.

Hurst in support of the rule to quash these orders insisted, that the new agreement made no alteration in the hiring for a year: that it did not work any discontinuance: that it by no means discharged the pauper from his contract for the year: that on the contrary the same species of service continued under the same original hiring, and that little more was varied by it than the mode of compensation.

Willes J.

The only question here is, whether there has been a service in pursuance of the hiring? The new agreement is not for a different species of service, nor is any thing there said of a waiver of the original contract; but at the end of six months the pauper is instead of annual wages to be paid by his earnings by the piece. The manner, in which the latter part of the service is performed, leaves it also equivocal, which agreement was their guide, or rather establishes that both were acted upon indifferently; as it is plain that the terms of the second agreement were not uniformly followed. If so slight a variance as the present were to vitiate settlements, they would be acquired under very few contracts; as nothing is more common than to do more than this, to transfer a servant from one species of work to another, as from the garden to the stable, and so throughout the whole of the economy of a family. [a]

Ashburst J.

The question is, whether the original contract is interrupted and wholly done away, or only the terms of it varied. It is clearly the latter. The servant is to work by the piece instead of the gross: and the conduct of the parties, subsequent to the new agreement, shews, that, with respect to the mode of performing the service, in the understanding of the parties, the original contract still continued to subsist.

Buller J.

In this case there is no doubt any way: but, even if there had been a discontinuance, which I think there was not, the second agreement, being general and not for any particular time, must be

[a] And that such an alteration in the nature of the service will not operate to defeat a settlement was agreed by the whole court (though there was a difference as to the main point before them) in the case of the *K. v. the Inhabitants of Great Chilton*. Tr. 34 G. 3. 1794. 5 Durnf. and East. 672.

1784.

REX

v.

The Inhabitants of
ALTON.

taken to be for a year, as all general indefinite hirings are; and consequently gives a settlement.

Lord Mansfield was absent.

Rule absolute and both orders quashed.

Vide the cases of the *K. v. the Inhabitants of Bagworth, E. 22 G. 3. 1782. ante 179.* and the *K. v. the Inhabitants of Grendon Underwood, Tr. 23 G. 3. 1783. ante 359.*

Rex v. Inhabitants of Findern.

TWO justices by an order remove *William Newham, Ellen* his wife and their six children from the parish of *Melbourn* in the county of *Derby* to the parish of *Findern* in the same county. The Sessions on appeal adjudge the settlement to be at *Findern*, confirm the order and state the following case:

A pauper, who obtains a certificate before he has completed forty days residence upon a tenement of the yearly value of ten pounds, avoids such certificate by completing such residence, and acquires a settlement.

Settlement at
Findern.
Melbourn

Wednesday,
May 5th.

That the pauper, *William Newham*, being settled in *Findern*, at *Lady-day 1782* took 2 acres, 2 roods and 3 perches of land there for a year at the rent of 20s. an acre; and at old *May-day* following took a tenement at *Melbourn* at the yearly rent of 7l. 10s. amounting together to upwards of 10l. a year: that on the 14th of *May 1782* he went to reside upon the said tenement at *Melbourn*, and, on the 14th of *June* then next, the churchwardens and overseers of the poor of *Findern*, at the request of the pauper, granted him a certificate, acknowledging him, his wife and children to be legally settled in *Findern*; which certificate was duly allowed by two justices of the peace and delivered to the parish officers of *Melbourn*: after which the pauper continued to occupy all the premises till the *Michaelmas* following: but there was no fresh taking after granting the certificate.

Bearcroft and *Balguy* shewed cause in support of these orders. They stated that the question arose upon the construction of the *stat. 9 & 10 W. c. 11.* which enacts, that "no person, &c. who shall come into any parish by any certificate shall be adjudged &c. to have procured a legal settlement in such parish, *unless he shall* really and *bona fide* take a lease of a tenement of the yearly value of ten pounds *per annum.* or shall execute some annual office in such parish &c"; and contended, that, the pauper having come to *Melbourn* under a certificate acknowledging him to be at that time an inhabitant of

of *Findern*, such acknowledgment was conclusive and the certificate could not be discharged, unless by some subsequent act of sufficient validity in law to avoid it: that there could be no such act in the present case, unless it were a *taking* of 10*l.* a year: but that such taking, to give a settlement, must be subsequent to the certificate; for the statute expressly says, that persons, *coming into* a parish by certificate, *shall take a lease of*, not use, enjoy, occupy, or reside upon, a tenement &c; and the intention of the Legislature in using this expression is made the more manifest by the language of the statute 13 & 14 *Car. 2. c. 12.*, a former act in *pari materia* and to which the certificate acts have immediate reference, which authorizes parish officers to remove all persons, who “*come to settle*” on any tenement under 10*l.* a year: that it was obvious therefore, that greater strictness was insisted upon in the case of certificate than in that of other persons, and that some act, with notice to the whole parish, equivalent to the election to some public office within it, (the only other mode by which such persons can acquire a settlement) ought to be done, subsequent to the *certificate* granted: that under the principle, by which settlements in general, independent of the particular provisions of the certificate acts, were to be acquired by renting 10*l.* a year, ability at the time of *the contract* was an indispensable requisite: that to have been able to have obtained credit ten years before or at any time previous was no proof of such ability now; and that it was impossible to draw any line, if the words of the statute were departed from: that it had been decided in the case of [a] the inhabitants of *Honiton* and *St. Mary Axe*, that a certificate was a solemn acknowledgment against the certifying parish; and that, though it might be, that the pauper did not stand in need of a certificate, this was by no means certain, as the renting might be fraudulent; and that this was an additional reason, why the Legislature should in this case have insisted upon more than ordinary strictness, as, from the high authority and conclusiveness of a certificate, the parish into which it came were lulled into a false security, and prevented from making timely inquiries into the title of paupers and detecting the collusive nature of their contracts: but that, whether there were fraud here or not, the pauper was unquestionably a settled inhabitant in *Findern* at the time of the *certificate* given; and the certificate was then conclusive, and could not by them be disputed: that, where women have been certificated

1784.

REX

v.

The Inhabitants of
FINDERN.

[a] M. 9 Ann. 1 Salk. 535.

1784.
 ~~~~~  
 REX  
 v.  
 The Inhabi-  
 tants of  
 FINDERN.

to parishes as wives, the Court has holden the conclusiveness of a certificate so absolute, that, even though these women have been clearly proved not to have been wives, the Court in the cases of [a] the parishes of *New Windsor* and *White Waltham* and [b] the *K. v. the Inhabitants of Headcorn* has decided, that the parish certifying was estopped; and that they should have taken care to have inquired before they granted their certificate: and that, with respect to any hardship that might be supposed to attend this particular case, it was of much more consequence that general rules should be adhered to.

*Bower*, in support of the rule to quash these orders, insisted; that this case had nothing to do with the question of the solemnity or conclusiveness of certificates: that the ground taken in argument was not founded in fact: that it was not true, that the pauper *came into Melbourn* under a certificate: that, when the certificate was granted, he was already there, residing upon his own and irremovable: that, though it was true, that at the instant of granting the certificate his settlement was at *Findern*, he not having then resided quite long enough upon his property at *Melbourn* to compleat his right and fix himself there permanently, yet being irremovable, if he did not become actually chargeable, he was not in want of any benefit to be derived from a certificate: that, having an inchoate right to a settlement, which he could by residence perfect without being in the interval disturbed, a certificate was altogether useless to him. That, construing the statute either liberally or literally, the pauper had in this case become irremovable. Taking it liberally he was resident upon a tenement, of which he had really and *bona fide* taken a lease; and is so protected: that a continuing to hold was in this case equivalent to *taking*, and the same thing as if he had agreed for the lease upon the day on which the certificate was granted: and that, if it was to be taken literally, it is as fair to say that he did not come into the parish with a certificate, as to say that he did not come into it and take a lease, when he was already in possession of one.

*Curia advisare vult.*

Saturday,  
 May 8th.

And now *Willes J.* delivered the judgment of himself *Ashburst* and *Buller*, Justices. The pauper came to *Melbourn* with a certificate, which he imagined to have been necessary, though, before he

[a] Tr. 5 G. Str. 186.

[b] Tr. 19 G. 2. 1745. Burr. Settl. Cas. 253.

so came, he had taken a lease of a tenement of ten pounds a year and part of it in that parish. He had therefore no occasion for a certificate. He was irremovable and intitled to acquire a settlement, to which nothing was wanting but a residence of forty days. It is not stated, that the parish of *Findern*, who gave the certificate, knew that he had no occasion for it. The statute, speaking of persons coming into a parish by a certificate, requires, that they shall take a lease of a tenement of the value of ten pounds a year, as a test of their credit. The pauper has here shewn that he had such credit, by having taken such a tenement; and the statute does not say, whether the taking shall be before or after the granting of the certificate. The statute indeed says, that he shall take; and here is a taking. The principle of the law therefore being credit and ability to take, and this being clearly a real and *bona fide* transaction, the spirit and object of the statute is answered and a settlement was acquired at *Melbourn*.

Lord *Mansfield* was absent.

Rule absolute and both orders quashed.

1784.

Rex

v.

The Inhabitants of  
*FINDERN*.

### Rex v. the Inhabitants of Maghull.

TWO justices by an order remove *Henry Golbourn, Ellen*, his wife and their five children from the township of *Maghull* in the county of *Lancaster* to the township of *Melling* in the same county. The Sessions on appeal adjudge the settlement to be at *Maghull*, quash the order and state the following case:

That the pauper, *Henry Golbourn*, took a tenement in *Maghull* of the yearly value of seven pounds for the term of eleven years, consisting of a cottage and about an acre of land by a verbal agreement from the Earl of *Seston*; for which the pauper was to pay the taxes, and which tenement the pauper let by a like agreement for his whole term therein to *John Wignall* at the same rent and terms: and it was part of the same agreement between the pauper and *Wignall* only, that *Wignall* should pay his rent to Lord *Seston*: that the cottage was at the time of this letting in the occupation of *Elizabeth Linford*, who had before taken the same from the pauper

Tenant at will after assigning his whole interest and the assignee accepted as tenant, if rent is sometimes paid by one and sometimes by the other and one sometimes in possession and sometimes

the other, and the lessor, years after the assignment, takes a bond from the original tenant as a security for the rent of the premises, such tenant at will may acquire a settlement.

3 K

at

1784.

REX  
v.  
The Inhabi-  
tants of  
MAGBULL.

at the yearly rent of three pounds: that *Wignall* entered into immediate possession of the land, being of the yearly value of four pounds a year, and let the cottage to *Linford* at the rent of three pounds: that the pauper afterwards rented a tenement of the yearly value of 75 l. in *Melling*, and resided thereon three years. Being sold up by his landlord and being distressed in his circumstances, he in or about the year 1780 gave up that tenement and came back to *Magbull*, having nothing but a few household goods to bring with him, where he took a cottage from one *William Woods* of the value of three pounds a year, on which he resided a year or more: that *Wignall* was taken for tenant to Lord *Sefton* of the whole premises in *Magbull* and secured to his lordship the rent thereof for the years 1778 and 1779 by the joint bond of the pauper and the said *Wignall*: that *Wignall* also received from *Linford* one year's rent for the cottage, discharged her for another, and the third year she had no goods to distrain on: that the pauper, after he had by an artifice got *Wignall* from home, without his consent entered upon the said land, which was then in *Wignall*'s occupation; and was by *Wignall* after his return home found mowing the same: but *Wignall*'s wife being the pauper's sister, she begged of her husband not to stop the pauper from mowing out the same; wherefore he let the pauper reap the hay and the pauper held the land much more than forty days, whilst he resided on the cottage which he took from *William Woods*: but the pauper, after he returned to *Magbull*, never received any rent of the cottage occupied by *Linford*, she not considering the pauper to have any right to demand the rent from her: that the pauper in the year 1780 paid Lord *Sefton*'s agent 3 l. 3 s. in part of the rent for 1780, which the agent demanded from him; being glad to receive the rent from whomsoever he could, though he considered *Golbourn* as getting fraudulent possession; and the pauper and *Wignall* entered into a joint security together to Lord *Sefton* for the residue of the rent for the year 1780, which was never paid.

Settlement at  
*Magbull*.

Saturday,  
May 8th.

*Cockell* shewed cause in support of the order of Sessions; and insisted, that the pauper had at no one period ceased to be tenant to Lord *Sefton*: that every circumstance demonstrated, that the relation of landlord and tenant subsisted between them: that the pauper was not only answerable in point of law to Lord *Sefton*, but was by him clearly so considered throughout; as his lordship had taken security from him and accepted rent. That, having obtained credit to the extent required by the Legislature, the circumstance of his having afterwards underlet the property could not make any difference;

ference; for it had been decided in the case of [a] the *K. v. the Inhabitants of Llandverras*; that, if a pauper *takes* or *rents* a tenement of the value required and resides upon it forty days, it is enough; and that it is not necessary, in the construction of the act, that he should *occupy*. Should it be said, that the pauper obtained possession the second time by fraud, the answer was, that it was not necessary that he should continue to hold the possession: that the occupation was totally immaterial; and the only question was, did he continue tenant to Lord *Seston*?

*Fielding* and *Manley*, in support of the rule to quash the order of Sessions, insisted; that this being a taking by parole for more than three years was under [b] the statute of Frauds no more than a tenancy at will: that it was consequently subject to all the incidents of a tenancy at will; and that such tenancy is determined by an assignment: that it is expressly laid down by Lord *Coke*, [c] that though such grant is void, it amounts to a determination of the estate at will: that there could be no doubt, but that an estate at will of sufficient value would intitle to a settlement; but that it appeared from the facts stated, that the pauper's interest in this estate of seven pounds a year had determined before he took the additional three pounds a year of *Woods*. That, as for these reasons the original taking would not avail, it was incumbent on the other side to shew a new taking, or no settlement could have been acquired at *Magbull*: that entering into a bond and becoming security for the rent was far short of obtaining a new demise and fresh credit: but, if it were possible to imagine that it was, as the bond was joint, it could only give the pauper an interest in a moiety of the estate, and the whole in his occupation would be far short of the sum necessary to give a settlement.

Lord *Mansfield*.

The circumstances of this case are very peculiar. They never did occur before, and probably never will again; and can never be an authority. It is put on this ground, that the original lease, which was no more than a lease at will, has by assignment been vacated; and that it must be shewn, that it has been renewed by a fresh demise, or a settlement was not gained at *Magbull*. It might be difficult to shew, that any new lease was granted; but was the

1784.

REX

The Inhabitants of  
MAGBULL.

[a] M. 7 Geo. 3. 1766. Burr. Settl. Cas. 571.

[b] 29 Car. 2. c. 3.

[c] Co. Litt. 75 a.

1784-  
 REX  
 v.  
 The Inhabi-  
 tants of  
 MAGHULL.

old lease ever vacated? I am of opinion, it was not. Throughout Lord *Seston* considers the pauper as his tenant, and he continued liable for the rent. In 1783, several years after the assignment, he is in possession; and his lordship accepts rent from him and takes security from him for the rent in a bond, in which he is joined by another person. This with the other circumstances attending it, *i. e.* the pauper's being at that time in possession and the acceptance of rent from him, shews, that Lord *Seston* retained him as tenant; and certainly does not afford, as was attempted, any ground of argument on the other side.

*Buller J.*

There is a seeming contradiction between Lord *Seston*'s conduct, as collected from all the other facts in the case, and the fact stated that the assignee was taken as tenant by his lordship; but there is one way of reconciling it. Lord *Seston* agreed to the occupation by the assignee and received rent from him, but did not mean to give up the pauper as tenant. His meaning was, to have them both liable.

*Willes and Ashburst, Justices, concurring,*

Rule discharged, and order  
 of Sessions affirmed.

### Rex v. Wetherill and Steed, Overseers, &c.

THIS was an indictment against two parish officers for keeping and lodging several poor persons in a filthy, unwholesome, room with the windows not in a sufficient state of repair to protect them against the inclemency of the weather.

Court never  
 quashes in-  
 dictment for  
 serious of-  
 fences, but  
 upon the  
 clearest and  
 plainest  
 grounds. In  
 an indict-  
 ment for cri-  
 minal mis-  
 conduct to-  
 wards the  
 poor a general description of them without setting out their names seems sufficient.

It stated, that *Samuel Wetherill*, late of *Beefton* in the borough of *Leeds* in the county of *York*, miller, and *Thomas Steed*, late of *Beefton* aforesaid, yeoman, on the 25th day &c. in the 24th year &c. and continually afterwards until &c. were and still are overseers of the poor of the township of *Beefton* in the borough aforesaid, duly appointed according to the laws and statutes of this realm to take care of and provide for the necessary relief of the lame, impotent, old, blind, and such other among them being poor and unable to work; and that the said *Samuel Wetherill* and *Thomas Stead*, so being such overseers as aforesaid in the borough aforesaid and not regarding the duty of their said office of overseers

of



of the poor aforesaid, did on the said 25th day of *December* in the year aforesaid, and continually afterwards until &c. in the year aforesaid, at *Beefton* aforesaid in the borough aforesaid, wrongfully and unlawfully, wilfully and contemptuously, as such overseers of the poor aforesaid, under a false and malicious pretence of finding necessary relief for the lame, impotent, old, blind and such other in the township of *Beefton* aforesaid in the borough aforesaid, being poor and unable to work, lodge, keep and maintain *several persons* belonging to the said township of *Beefton* which were lame, impotent, old, blind, being poor and unable to work, in the chamber of a certain *cottage* in the township of *Beefton* aforesaid in the borough aforesaid; which chamber during all the time aforesaid was not only dirty, filthy and unwholesome, but was also, by the want of necessary and proper repairs of the window therein, laid open and exposed to the coldness and severity of the weather, to the great damage of the said several lame, impotent, old, blind and poor persons, to the evil and pernicious example &c. and against the peace, &c.

1784.  
 ~~~~~  
 REX
 v.
 WETHE-
 RILL.

Fearnley obtained a rule to shew cause, why, on the grounds of insufficiency in form as well as substance, this indictment should not be quashed. He objected, that it was informal in not setting out the names of the several poor persons, who had been aggrieved by the misbehaviour imputed, and that, upon this principle as appeared from [a] *Hawkins*, an indictment for taking excessive toll of *divers* persons, without naming any persons in particular, had been adjudged bad: that it was uncertain in not pointing out, or in some way ascertaining or describing, the particular cottage, in which the supposed offence had been committed; it being impossible to know how to answer the charge, as there might be many other dirty cottages with broken windows in which a poor man might be lodged; and this might also be the workhouse provided for them by the parish: that it was also bad in substance; because it was not an indictable offence in overseers to put poor people in a dirty room: that it was the duty of the paupers to clean their rooms; and that, if the windows were broken, they had a summary remedy by application to a magistrate.

Chambre shewed cause; and insisted, that, as the indictment itself answered all that was objected in substance, the Court would never

Monday
 May 17th.

[a] 2 Hawk. P. C. 329. On an information for extortion by defendant, who was possessed of a Ferry boat, in taking of *divers subjects divers sums* exceeding &c. judgment was arrested. K. v. Roberts, E. 4 W. & M. Show. 389.

1784.

~
 REX
 v.
 WETHE-
 RILL.

quash upon formal objections, but oblige the parties to demur or plead: that this offence is here sufficiently charged by giving to the persons aggrieved the general description of paupers &c; and that the Court will never, for the purpose of defeating a laudable public prosecution, presume the existence of a provision for the poor in a mode, in which the parish officers are not compellable to make one.

Fearnley relied almost wholly upon the authority in *Hawkins*.

Ashburst J.

It is a settled rule, that the Court will never quash indictments for perjury, nuisances or any serious misdemeanors; but leave the party to his remedy by demurrer, or compel him to plead. The objections here can only be to the form; for the offence alleged is inhumanity and endangering the lives of the poor.

Buller J.

The rule laid down by *Ashburst J.* is to be found in [a] *Hawkins*; and the Court will never do otherwise, except on a clear and indisputable ground. And I am by no means disposed to think, that either of these objections would prevail on demurrer or in arrest of judgment. The last is abandoned; and it seems to me that the omission of the names and numbers is not here material; though in the case cited, that of a toll, which might be exacted from all the King's subjects, to know in how many instances extortion had been practised, is necessary to a just admeasurement of the punishment: but here, where the abuse consists in lodging several poor of a parish in a filthy, unwholesome cottage chamber without windows, the numbers in the chamber of a cottage cannot be very many; and the persons abused, the objects of the charitable provision of the law, are of a particular denomination, and, though not individually named, are rendered sufficiently certain: and perhaps, (but on this I give no opinion) this might be the best way of charging the offence.

It does not appear, that there is any other room in any other cottage in the parish set apart for the use of the poor; and the parish are certainly not compellable to erect workhouses, but may maintain and employ their poor at their own homes. If any thing can be made of this point, it is a defence in evidence at the trial.

Lord *Mansfield* and *Willes J.* were absent.

Rule discharged.

[a] 2 Hawk P. C. 367.

1781.

Rex v. the Inhabitants of Edmonton.

TWO justices by an order remove *Susannah Parker*, the wife of *William Parker*, from the parish of *Enfield* in the county of *Middlesex* to the parish of *Edmonton* in the said county. The Sessions on appeal adjudge the settlement to be at *Edmonton*, confirm the order and state the following case:

Illegitimate infants may under st. 26 G. 2. c. 33. marry by licence with the consent of their putative father.

That the settlement of the pauper, *Susannah Parker*, at the time of her intermarriage with the pauper, *William Parker*, was in the parish of *Enfield* Middlesex, and that the settlement of the said *William Parker* at the time of the removal of the pauper, *Susannah*, was in the parish of *Edmonton* Middlesex: that the pauper, *William Parker*, was on the 21st of *August* 1763 baptized in the parish church of *Spittalsfields*, as the son of *William Parker* and *Sarah*, and so registered: that the said *Sarah* the mother of the said *William Parker* (the husband of the pauper) was on the 7th of *July* 1764 buried at *Edmonton* in the name of *Sarah Parker*: that *William Parker* junior and the said *Susannah* his wife (then *Susannah Ellis*) were on the 14th of *September* 1783 married by licence by consent of parents in the parish church of *Enfield* Middlesex: that, on account of the said *William Parker* junior and *Susannah* his wife being then minors, such licence was obtained by the consent of *William Parker*, called in such licence the natural and lawful father of the said *William Parker* junior and of *James Ellis* the natural and lawful father of the pauper *Susannah*: that the said *William Parker* did at the time of giving such consent for obtaining such licence make the usual affidavit before the proper ecclesiastical officer, that he was the lawful and natural father of *William Parker* the younger, and the said *William Parker* gave evidence in Court that the pauper *William Parker* the younger was his son; but that he was never married to the said *Sarah* the mother of the said *William Parker* junior.

Settlement at *Edmonton*.

Peckham and *Silvester* shewed cause in support of these orders; and insisted, that there had been legal and sufficient evidence of a marriage in this case laid before the court of quarter sessions; and that they had judged well in deciding that the affidavit of the father, supported by the entry of the baptism and burial of the son and wife in the father's family name, preponderated against his parole evidence: but that perhaps that evidence ought not to have been received; for, although

Wednesday
May 19th.

in.

1784.
 REX
 v.
 The Inhabi-
 tants of
 EDMONTON.

in the case of [a] the *K. v. the Inhabitants of St. Peter's in Worcester-shire*, the father's testimony had, after the mother's death, been admitted to bastardize the issue, the circumstances of the two cases were materially different: that there the woman had been dead only fifteen weeks, when the evidence was received, and consequently not only the falsehood of the father's testimony might have been enquired into and detected, and the marriage, if any such there were, might have been easily proved, but that the putative father there had no interest, and did not, as the Court said, swear to discharge himself; as whether he was the lawful or natural father, he was equally bound to maintain the child: that on the contrary not only twenty years had here elapsed since the woman's death, by which the proof of the marriage and detection of the husband's falsehood in his evidence could not be made with so much effect, but the man had an interest in proving the illegitimacy of the child: he swore to discharge himself; for the son, who is stated to be married and emancipated and to have gained a settlement, subsequent to that of his birth in *Spittalsfields*, if he is a bastard, as his father's oath would make him, his father is no longer liable [b] to contribute to his maintenance; which, if he were a legitimate child, he would be bound to do.

They also insisted, even if the result of the facts disclosed in the case was, that there was not sufficient proof of a legal contract of marriage by the father, that still there could be no doubt of the validity of the pauper's marriage by license; that the license had been obtained with the consent and under the oath of the putative father: that the marriage act [c] in general terms requires the consent of the father, and does not express or intimate any distinction between the natural and lawful father: that in the construction of a highly penal act, the stat. 4 & 5 *P. & M. c. 8. § 3.*, which enacts, that every person above the age of fourteen, who takes or causes to be taken away any female child under sixteen years of age and unmarried from the possession and against the will of the

[a] E. 8 G. 2. 1735. Burr. Settl. Cas. 25.

[b] This is so, because the stat. 18 Eliz. c. 3, which empowers two magistrates to charge the mother or reputed father with the maintenance of bastard children, is made in case of the burthen, which in such cases falls upon the parish in which they are born and for the relief of such parish only: the parish therefore, in which a bastard becomes in any other mode settled, has no remedy under this statute; and cannot, under any other, tax any one in aid of him, who is by the general law *filius nullius*.

[c] 26 Geo. 3. c. 33. § 2.

father

Father &c., shall suffer two years imprisonment or pay such fine &c., it has been holden in the case of [a] the *K. v. Cornforth & al*, that it extended to the natural father; and an information was accordingly granted against the defendant for taking away a natural daughter from her putative father: that, though this is in its general view a restraining act, with respect to the parental authority it certainly was not restrictive; and would therefore in that particular receive a beneficial construction: that to determine otherwise must be attended with consequences the most opposite, it must altogether prevent the marriage of natural children by licence: that they must either marry by banns, which in such cases might under many circumstances throw obstacles in the way of a contract which the law always favours; or put them to the expence of having guardians appointed in Chancery, where possibly they might not be intitled to make such application.

Bearcroft and *Fielding*, in support of the rule to quash these orders, contended; that evidence only had been returned by the Sessions without any conclusion drawn from it: that their aim seemed to have been to say, that the young man, married by licence, had not had the consent of such father as was necessary to make his marriage valid; but that instead of directly finding the fact to be so, they have stated, that the father made an affidavit, for the purpose of the young man's marriage, in which he stated, that he was his lawful father; and afterwards swore in court that he was not: that this court would not at any rate, while there remained a confusion and contradiction in the facts, draw any conclusion themselves; but would send the case down to be re-stated: not that there was any real or wilful contradiction, any moral difference, in the testimony given by the father on the two different occasions: that he had not in his affidavit represented that he was married; and it could not be imagined, that he meant to swear to the law: that he knew he was the young man's father; and, to enable him to obtain a license, took the oath required by the statute for that purpose, in the form in which the proper officer administers it: that it had been argued, that the Legislature, when they used the word "father" only, referred to the relation of father and child generally, without adverting in the least to our municipal or religious establishments; but, that it cannot be supposed that an *English* statute could under such a term mean to describe a person, whom the *English* law does

1784.

REX

The Inha-
bitants of
EDMONTON.

[a] H. 15 G. 2. 2 Str. 1162.

1784.
 Rex
 v.
 The Inhabitants of
 EDMONTON.

not acknowledge: that, with respect to the case cited, it was not only a very liberal construction of a law made on behalf of female infants for the security of their property as well as persons from rapine and violation, but had also passed without argument.

Buller J.

However that may be, the point has been considered as settled ever since.

They then insisted, that the objection to the competency of a father to speak to the legitimacy of his child, because he was bound to contribute to his support, had never occurred in any ejectment, and did not deserve a serious answer: that the law was clear; nor could it be said to be hard: for though, as a bastard was *filius nullius*, there existed here no one whom it recognized in the character of a father for the purpose of giving validity to an infant's marriage by license, yet illegitimate children might at all times be married by banns; and, if circumstances that would very rarely occur should make it eligible for them to be married by license, they were in no worse a situation than legitimate children, who had lost their parents: they must apply to chancery for the appointment of a guardian.

Willes J.

The question is, Whether enough has been returned by the quarter sessions to enable us to decide upon the case. For this purpose it will be proper first to consider the evidence. Upon the evidence, which has been fully and repeatedly stated, I am inclined to think, that at *nisi prius* it would have been thought to have preponderated in favour of the marriage; and perhaps the father might be indictable for perjury. But it is contended, that the Court below have made no adjudication upon this evidence. On the contrary, as they dismissed the appeal, this act of confirmation of the prior order of two justices must be taken as an adjudication in favour of the validity of the marriage, and a sufficient foundation for us to act upon without sending the case down.

With respect to the act of parliament, in cases of this sort it ought to receive a liberal construction. To be sure in the case of [a] the *K. v. the Inhabitants of Preston near Faversham*, where the infant married without his father's consent, he lost his settlement; but here, where there is his father's consent, where the determi-

[a] M. 33 G. 2. 1759. Burr. Settl. Cas. 486, 1 Bl. Rep. 192.

nation in favour of the marriage is not in opposition to the letter but in support of the spirit of the law and object of the Legislature, it ought to be secured to him. The general object of the marriage act was to prevent the clandestine marriage of minors without the consent of their friends; and a putative father seems to me a much more proper person to give his sanction to such an act than a guardian; chosen in substance probably by the parties themselves for the purpose of consenting. If then in the case of any statute in *pari materia* the word "father" has been construed to include a putative as well as a lawful father, we are warranted in putting the same construction on this act; and we find that this has been done in construing the statute of *Philip and Mary*, where the expression is the same; and that was a highly penal act.

1784.

Rex

The Inhabitants of
Edmonton.

Ashurst J.

As to the facts I shall say nothing; but having little or no doubt upon the law, I can by no means consent to send down the case to be re-stated. The case in *Str.* is stronger than the present. The construction there went to make the act of taking the infant a heavy crime in the parties. Here it is to give the act beneficial instead of penal consequences; but in favour of such a marriage one would be satisfied with the slightest precedent; that we may not aggravate the distress of those, whose situation is not to be attributed to any default of their own.

Buller J.

There is no doubt, but that the Sessions have returned evidence instead of facts; but if no conclusion, which they could have drawn from that evidence, would vary the case, it is not necessary to send it back. Now, they might say, we don't believe the parole evidence of the father against his affidavit and the entries, or we do believe it and say there was no marriage: and they have stated so much, as that they appear to have concluded (and I think rightly) that there was no marriage. There is no ground for the objection to the admissibility of the father's testimony, or any foundation for a charge of perjury against him. He was applied to in his character of father; and his affidavit, drawn in the common form, was made under a mistake of the law. The marriage having been with the consent of the putative father, the question is, Whether such marriage is within the marriage act? But it is not necessary here to give a decisive opinion upon the point; for, taken either way, this marriage is good. If this case is within the act, there is nobody to consent but the natural father, and the act must mean

1784.
 Rex
 v.
 The Inhabitants of
 EDMONTON.

such, an illegitimate child having no other: if the act cannot be extended in construction beyond the lawful father, then, the present case not being within it, no consent can [a] be necessary. At the same time the *K. v. Cornforth & al.* is a strong authority; nor is it weakened or any difference made by the form in which it came before the Court. If the meaning is plain, the construction of civil and penal laws is the same: their true interpretation is the common and sole object of inquiry. And this case has repeatedly been recognized in this court as law.

Lord Mansfield was absent.

Rule discharged and both orders affirmed.

[a] But in a subsequent case the Court has come to a decision upon this point; and adjudged, that the marriage of an illegitimate child by license without the consent of parents or guardians is void under this statute. *Rex v. Hodnett*, H. 26 G. 3. 1786. 1 *Dunf. and East.* 96.

Rex v. the Inhabitants of Seaton and Beer.

A general hiring is a hiring for a year. A weekly reservation of wages does not of itself determine, Whether a contract is weekly or annual; but this must be collected from the circumstances attending the contract. The understanding or opinion of master or servant as to any obligation, which in point of law they may be subject to, can be of no weight.

TWO justices remove *Sampson Gill*, *Martha* his wife and their four children from the parish of *Broadcliff* in the county of *Devon* to the parish of *Seaton* and *Beer* in the same county. The Sessions on appeal confirm the order, and state the following case:

That *Sampson Gill*, the pauper, being settled in the said parish of *Seaton* and *Beer*, went into the parish of *Broadcliff*, and made an agreement with one *Samuel Ponsford* (who kept a public house there) as follows: That *Ponsford* said to him, that he would give him a shilling a week, as he had given the other man or men, and the vails of the stables; and that nothing was said about the time of his service: that at the end of the year his mistress said to him: "You have been here a year, I will pay you:" to which the pauper replied, "It was no matter, I may stay with you another year:" she said "very well, *Sampson*:" that he did stay another year, and then received what was due to him, being 5 *l.* 4 *s.*: that the pauper worked in the stable as an ostler; and that neither at the time of making the first agreement nor at the end of the first year was

and

any mention made by the master, mistress or pauper of a hiring for a year, or of the term for which he was to serve; but that he the pauper apprehended his master might have parted with him at any time on giving reasonable notice: and that no evidence appeared before this court of the time for which any such man or men, as above referred to, had been at any time hired by the said *Samuel Ponsford*.

Fanshawe shewed cause in support of these orders; and contended, that there were in this case circumstances sufficient to shew, that this was not a hiring for a year: that there was a weekly hiring, and a reference to services of the same description and character by other persons: that in this respect the present case totally differed from that of [a] the *K. v. the Inhabitants of Berwick St. John*; in which by reference to the place, filled by a servant who received annual wages, the duration of the contract between the parties was fully ascertained and explained: that on the contrary it resembled the cases of [b] the *K. v. the Inhabitants of Dedham* and [c] the *K. v. the Inhabitants of Bradninch*; in both of which the hirings were weekly; in both it is laid down that the obligation to serve must be mutual: and in the first the old rule is insisted upon, that "the Court has always been very strict with respect to the hiring;" and in the second the hiring was conditional: and a conditional hiring for a year [d] will give a settlement. That the case of [e] the *K. v. the Inhabitants of Stockbridge*, which would probably be cited on the other side, was that of a general hiring; and where there were not, as here, circumstances to repel the presumption, arising from the general terms of the contract.

Silvester and *Clappe*, in support of the rule to quash these orders, admitted; that, wherever the question has been raised, whether a hiring for a shorter term than a year could be construed into a hiring for a year, the circumstances of the case have been resorted to, as the proper interpretation of the meaning of the parties; but insisted that a general indefinite hiring was a hiring for

1784.

REX

v.

The Inhabitants of
SEATON.Settlement at
Broadcliff.Wednesday,
May 19th.

[a] E. 33 G. 2. 1760. Burr. Settl. Caf. 502.

[b] M. 10 G. 3. Bott. 284.

[c] H. 10 G. 3. Bott. 285.

[d] The *K. v. the Inhabitants of Lidney*, T. 6 & 7 G. 2. 1733. Burr. Settl. Caf. 1. the *K. v. the Inhabitants of New Windsor*. H. 8 G. 2. 1734. Burr. Settl. Caf. 19. the *K. v. the Inhabitants of Atherton*. H. 16 G. 2. 1742. Burr. Settl. Caf. 203.

[e] M. 14 G. 3. 1773. Burr. Settl. Caf. 759.

a year,

1784.

~

REX

v.

The Inhabitants of
SEATON.

a year, and so established as well in the case cited of the *K. v. Stockbridge* as in those of [a] the *K. v. the Inhabitants of Wincanton* and [b] the *K. v. the Inhabitants of Bath Easton*. That the first hiring in this case was of this description and indefinite, as the duration of the service by reference to the contracts or services of other servants in the same place was not ascertained; but that, if this were any way doubtful, the second hiring expressly referred to an annual service: and that to this point the case cited of the *K. v. the Inhabitants of Berwick St. John* directly applied. That the reservation of wages at short intervals could not conclude upon the extent and duration of the contract; though it might shew what was the convenience of the particular party, who made this stipulation; and that the cases cited of the *K. v. Dedham* and the *K. v. Bradninch* had no circumstances, by a reference to which it could be shewn, that even the service was meant to be annual.

Willes, J.

All the cases shew, that a general hiring is a hiring for a year: and the case cited of the *K. v. Stockbridge* puts it out of all doubt. The reference in the present case to the place of a former servant, and the terms on which he served, is something more than a general retainer in the service. The conversation at the end of the first year also amounts to a conditional hiring for the next.

Ashburst, J.

I am not disposed to narrow those rules of construction, which have been admitted in favour of settlements; and this case does not go so far as some others have gone. As far as they may be said to constitute a general rule, the substance of the cases is; that the interpretation of hirings for a less term than a year with a reservation of wages at the expiration of such term, shall be collected, if the services are continued throughout the year, from the various circumstances belonging to such hirings. Now, even if doubt might be entertained upon the effect of the first agreement, the terms of the second, which is plainly a conditional hiring for a year (whether the first did or did not amount to a general hiring either in its own terms or by reference to the circumstances attending it) seem to shew, that the original agreement had from the beginning been considered by the parties, as being of the same character and description as the last: and the terms of a contract in

[a] H. 24 G. 2. 1750. Burr. Settl. Cas. 299.

[b] H. 16 G. 3. 1776. Burr. Settl. Cas. 823.

the language of the parties themselves will always be a key to the true construction of it.

Buller J.

It has been long and fully settled, that the private understanding of the parties either one way or the other, as to the legal effect of their contracts and whether they may or may not part with each other, can make no difference. That being laid out of the case, the opinion of *Nates, J.* in the case cited of the *K. v. Dedbam* [a] is an authority precisely in point; and must govern this case. His words are "In the present case, *if the master had not paid sixpence a week more* at the time of this conversation passing, the servant said, he would have quitted the service. If it had not been for this circumstance, I should have inclined to have thought it a hiring for a year." The manner of fixing the wages then, no more than the apprehension of the pauper, can make any difference as to the effect of the contract; but the true state and explanation of the original contract, as it is there agreed by the master and servant to be, arises from a conversation during the service between them; from which it was concluded that the alteration in the wages and the subsequent conduct of the parties was sufficient to shew, that the original hiring was not intended for a year. The subsequent conversation in the present case seems to unfold the object of the original contract as satisfactorily: but, if it did not, as a new contract it leaves no doubt whatsoever [b].

Lord Mansfield was absent.

Rule absolute and
Both Orders quashed.

1784.

REX

v.
The Inhabitants of
SEATON.

[a] Bott. 285. Ed. 1773.

[b] Since the date of this case there have been several determinations, in which hirings of a similar nature have, under their respective circumstances, been determined not to give and to give a settlement. Of the first class are those of the *K. v. the Inhabitants of Ellsack*, H. 25 G. 2. 1785. post. 489, the *K. v. the Inhabitants of Newton Toney*, E. 28 G. 3. 1788. 2 Durnf. & East 453., the *K. v. the Inhabitants of Odiham*, Tr. 28 G. 3. 1788, Ib. 622, and the *K. v. the Inhabitants of St. Matthew Ipswich*, Tr. 30 G. 3. 1790, Durnford & East. 3. 449.

Of the other class, those which have been adjudged to give a settlement, are the *K. v. the Inhabitants of Alton*, E. 24 G. 3. 1784. ante 424, the *King v. the Inhabitants of Chertsey*, Tr. 27 G. 3. 1787. 2 Durnf. & East. 37., the *K. v. the Inhabitants of Birdbrooke*, E. 31 G. 3. 1791. 4 Durnf. & East. 245, the *K. v. the Inhabitants of Hampreston*, E. 33 G. 3. 1793. 5 Durnf. & East. 205. Nolan 2. 216. and the *K. v. the Inhabitants of Lyth*. Tr. 33 G. 3. 1793. Ib. 327. Nolan 2. 256.

And by a late decision it has also been laid down in the case of a servant in husbandry, that "living for 3 years" is certainly evidence of a hiring for a year, and by Lord Kenyon, strong and almost conclusive evidence, though his original hiring was for part of a year only. *R. v. the Inhabitants of Long Whatton*, M. 34 G. 3. 1793. This case is reported in 5 Durnf. & East. 447. And see to this point in the case of an apprentice the *K. v. the Inhabitants of St. Michael's Bath*. Burr Sett Cas 731. Croft 618

Thomas Ditts
port 456. St 2
Guildford port.

1784.

R. v. Saltren, Esq.

The person, to whom a parish appoint an apprentice, is concluded by signing the indenture: nor can parol evidence be admitted of any prior informality in such indenture.

Justices may appoint apprentices at any age beyond that of nurture; except perhaps in cases of husbandry. Incorporeal property (as tithes) makes the holder liable to take a parish ap-

prentice. The usage of a particular district cannot vary the general law. At the time of the execution of an indenture of apprenticeship by the master, it seems, that the indenture ought to have the signature and allowance of two justices.

Wednesday,
May 19th.

TWO justices confirm an indenture made by *John Snow*, churchwarden, and *Thomas Hookway* and *Thomas Cudmore*, overseers of the poor of the parish of *Monkleigh* in the county of *Devon*, whereby *Ann Morrish*, aged about eight years, a poor child, was bound an apprentice to *John Saltren*, Esq. for the sheaf or great tythes of the said parish to bring up or cause to be brought up in *housewifery*. The Sessions on appeal confirm this indenture, and state the following facts:

That the appellant is, and for several years last past hath been, an inhabitant in the parish of *Monkleigh*; but that no glebe or house or barn is appropriated to the said tythes, which are rated to the poor at 48 *l. per ann*; and that *the said appellant had executed the counterpart of the said indenture* upon tender thereof: and that in respect of the said tythes no apprentice had heretofore been bound; but that the custom of binding in that parish had been upon lands of ten pounds *per annum* and upwards: and that parol evidence was offered, but refused by the Court, to prove, that, at the time of the execution of the counterpart of the said indenture by the appellant, the said indenture and counterpart were signed by one justice of the peace only; although the said indenture now produced to this court appears to be signed and allowed by two justices.

Lawrence and *Clappe* shewed cause in support of the order of sessions, confirming this indenture; and insisted, that whatever objections might be made to the validity of this indenture, the defendant was not at liberty to avail himself of them, having concluded himself by executing a counterpart: that an attempt to impeach an instrument, after having given it the most solemn affirmation, was contradictory and absurd: that a practice of this sort, if any such there were, could not be supported upon principle; neither was it warranted by the provisions of any one of the statutes upon the subject: that the statute 43 *Eliz.* [a] gives an appeal generally to the party grieved against all acts done by justices &c. under that sta-

[a] C. 2. § 6.

tute: that the statute 8 & 9 W. 3. [a] particularly directs, that "where any poor children shall be appointed to be bound apprentices, pursuant to the 43d of *Eliz.*, the person or persons, to whom they are appointed to be bound, shall receive and provide for them according &c, and also execute the other part of the said indenture; and, if he or she shall refuse so to do, &c. he or she &c. shall forfeit &c., saving always to the person to whom any poor child shall be appointed to be bound an apprentice &c, his or her appeal:" that an appeal therefore may be had against this appointment, if the party will not recognize it; but, if on the contrary he do not "refuse to receive, &c.", if he comply with every thing required, there can then remain nothing, against which to appeal: and consequently that in the present instance the defendant by his acquiescence was estopped.

But that, supposing the appeal lay and the validity of the indenture were open to discussion, there were three grounds, upon which the rule to quash the order of confirmation had been obtained: 1. That no person has any authority to appoint a poor child under ten years of age to be an apprentice: 2. That this binding was contrary to the usage of the parish, by which incorporeal property was not subject to this burthen: 3. That the Sessions had rejected parole evidence, that, at the time of the execution of the counterpart, it was signed only by one justice.

With respect to the first objection, that this child, being only eight years of age, could not be appointed an apprentice, they insisted; that, unless the Court should say, that a child of these years, the object of whose apprenticeship is stated to be housewifery, could not be of use in any domestic employment, the binding must so far be valid; for fitness or unfitness was a matter of fact to be determined upon evidence, and in the discretion of the justices at Sessions: that in *Minchamp's* case, [b] which was a question who was compellable to take apprentices, this had been adjudged; and therefore that the Court would presume, unfitness not having been here found, that this child was fit to be bound: that the stat. 43 *Eliz.* [c] prescribes no particular age, but leaves every thing in this respect to the parish officers, subject only to the approbation of two magistrates: that under such circumstances the line, that

1784.

Rex

v.

SALTREN.

[a] C. 30. § 5.

[b] Tr. 13 W. 3. 2 Salk. 491.

[c] C. 2. § 5.

1784.

REX

v.

SALTREN.

seems most reasonable to be adopted, is in some measure drawn by the general law; which directs, that, till seven years old, they shall continue with their mother for nurture: that after this age, evidently because they then may be put in a way of gaining a settlement, there must be an express adjudication in every order of removal, that they have gained no settlement of their own; and they cannot often have an opportunity of acquiring one, while under ten years of age, by any other means than those of an apprenticeship: that it is true, that the stat. 5 *Eliz.* [a] requires apprentices in husbandry to be ten years of age; which it does not require in any other art or manual occupation; but that several other statutes authorize parish officers and magistrates compulsorily to put poor children in a way of gaining a settlement as apprentices, by reference to the general law, after their age of nurture is compleated: that the stat. 17. G. 2. [b] authorized the justices at Sessions to bind out the children of vagrants above seven years old: that the stat. 5 *Eliz.* [c] admits of children being apprenticed to seafaring men, if above seven years old: that the *K. v. Cleverly*, which would probably be cited on the other side, was the case of an apprentice in husbandry: that the indenture there was adjudged illegal under the express provisions of stat. 5 *Eliz.* [d]; and that the objects of that statute and the 43d of *Eliz.* [e] upon which the present case stands, were totally different; the first being framed, principally for the advancement of husbandry, in which the labourer must be of an age that will supply some considerable degree of strength, and the other to provide a maintenance for the poor, which is done by putting them out apprentices to any sort of business, to which their strength, whatever it be, or years are equal.

As to the second objection, that this binding was contrary to the usage of the parish, by which incorporeal property was not subject to this burthen, they insisted; that, though a custom, the extent of which was universal and reached throughout the realm, might under some circumstances form a good rule of construction of an act of parliament, yet that no such local custom, as was here stated, could narrow or controul it: that the act here was general, and said nothing of the sort of occupation necessary to charge the

[a] C. 4. § 25.

[b] C. 5. § 24.

[c] C. 5. § 12.

[d] C. 4. § 25 & 35.

[e] C. 2. § 5.

master;

master; and that in this case, where the offices of the child were by the terms of the indenture to be menial, and she was not bound as an apprentice in husbandry, land could not be necessary: but, as the value was near five times as much as would subject land, there could be no doubt of ability.

1784.
 REX
 v.
 SALTERN.

As to the third objection, that the Sessions ought to have received parole evidence, that, at the time of the execution of the counterpart, it was signed only by one justice, they contended; that as the stat. 43 *Eliz.* only required the assent of any two justices, it was sufficient, if such assent were given in any way and at any time; and that it was not necessary that it should be expressed upon the face of the instrument: that he should have objected at the time; but that on the contrary he had signed the deed, which now appeared to be regular: and, having signed it, could not afterwards be permitted to contradict the due execution of it, or take advantage of any prior informality.

Fanshawe and *Gibbs*, in support of the rule to quash the order of Sessions, confirming this indenture, contended, as to the preliminary point that had been made, whether the defendant had precluded himself from disputing the validity of an instrument, which he had by executing solemnly ratified; that, till the execution of the indenture, he was not aggrieved; and that, till there was some *gravamen*, there could be no foundation for an appeal: that the stat. 8 & 9 *W. 3.* gave the party grieved an appeal to the next Sessions: that this must mean to the Sessions next after the execution [a] of the indenture: that, if this were so, or if the second magistrate's signature were necessary to the validity of the instrument, the period limited for the appeal, which was to the next Sessions, had elapsed: that at any rate, till the indenture had been signed by the second magistrate, there was in contemplation of law no existing instrument, nothing that could legally be enforced; and consequently nothing to be appealed against: and that the form of the indenture was therefore open to discussion.

They then contended, 1. That the binding was void on the grounds of illegality and unfitness. That it was illegal, the child not being of a sufficient age to warrant it: that this conclusion would be the result of a view of the several acts of parliament upon this subject: which being in *pari materia* ought under the

[a] But by § 5. the appeal is saved "to the person, to whom any poor child shall be appointed to be bound."

1784.

~

R. v.

SALTREN.

common rule of construction to be taken together: that the stat. 5 *Eliz.* [a], which it is observable was compulsory only upon the apprentice, expressly fixes the age of ten years: that now, when the master also has been made by subsequent provisions [b] compellable to receive the apprentice, there is an additional reason for fixing a sufficient age: that by regulations [c] still later the Legislature, in respect to the interests of masters, which were affected by the compulsory provisions of the stat. of 8 & 9 *W.* 3., and with a view that the advantage to be received by them might bear some proportion to their burthen, have declared; that "no masters of trading ships or vessels shall be obliged to take an apprentice under the age of thirteen years, or who shall not appear to be fitly qualified both as to health and strength of body for that service:" that before these regulations of the 4th of *Ann.*, an earlier statute of that reign [d] had, upon this principle and agreeable to the stat. of 5 *Eliz.* c. 4, fixed the age of these apprentices at ten years; though it was true, that, before the stat. of 8 & 9 *W.* 3. had made the master compellable to take the apprentice, the stat. 5 *Eliz.* c. 5. had said, that apprentices above seven years of age may be bound to sea-faring people; but that this was by express provision in that particular case: and Mr. *Fanshawe* cited the case of the *K. v. Cleverly*, summer assizes at *Winchester* 1774 cor. *Nares* J. The defendant was indicted for refusing to receive and provide for a parish apprentice appointed to serve him in husbandry; and, it appearing in evidence, that the apprentice was only nine years old, the judge held, that the indictment could not be supported; because the stat. 5 *Eliz.* c. 4. limits the age for binding to the period between ten and eighteen.

They also contended, that the binding was unfit, as being in respect of the great tythes: and that it ought to appear that the apprentice could be useful to the master in that particular service, in collecting the sheaf or great tythes.

2. In support of this objection, that the binding, in respect of incorporeal property, was illegal, as being contrary to the usage of the parish, they contended; that, though it was true, that even a general usage might not controul the law, when it was clearly and

[a] C. 4. § 25. & 35.

[b] 8 & 9 *W.* 3. C. 30. § 5.[c] 4 *Ann.* C. 19. § 16.[d] 2 & 3 *Ann.* C. 6. § 1.

plainly

plainly established, yet, in all cases short of that, it had ever been allowed to have considerable weight: that in the case of [a] the *K. v. the Inhabitants of Ringwood*, Lord Mansfield and Aston J. dwelt much upon the usage of rating personal property to the poor: that in the case of [b] the *K. v. Francis Hill*, though the counsel on both sides agreed to waive the usage, and even though it was in the case of a local usage only, both these learned judges determined, that it ought to be stated; and the Court finally determined, that the judgment must follow the usage: but that in all cases whatsoever an usage not to charge a property, that was always notorious and visible, must be a strong evidence of the inconvenience and unsuitness of so doing: that *Minchamp's* case proves only, that, where the Sessions say, a master is unfit to have an apprentice appointed to him, this Court will not unsay it: but that the reverse of the proposition will not hold; for suppose they were to say that a lunatic is fit? and that, in fitness and reasonableness, there may well be a middle point between the age of nurture and the period of becoming so useful, as to subject the person, to whom the child is appointed, to the necessity of receiving him.

3. In support of the last objection, that the Sessions ought to have received parole evidence, that, at the time of the execution of the counterpart, it was signed only by one justice, they insisted; that this, being an authority given to the magistrates by statute, must be strictly pursued: that the assent of the two justices must appear upon the face of the indenture by their signature: that the constant course of business has been, that they should express their assent in this way: that it can only appear by parole evidence, that the instrument was not so authenticated, when tendered: and that it was every day's practice in actions of trespass against bailiffs, if they justified under a warrant, to receive parole evidence, that the bailiff's name was not in the warrant at the time of its execution by the sheriff.

Willes J.

No answer appears to me to have been given to Mr. *Lawrence's* preliminary objection. I think the appellant has concluded himself by executing the counterpart, and shall not be permitted to contradict his own deed. The appeal is given only in case he refuse to take the apprentice: here he accepts him.

[a] Tr. 15 G. 3. 1775. Cowp. 326.

[b] H. 18 G. 3. 1778. Cowp. 613. Vide also *Rex v. James Rodd*. H. 22 G. 3. 1782. ante p. 149.

1784.

REX

v.

SALTREX.

But

1784.
 REX
 v.
 SALTWEN.

But there does not seem to be much weight in any of the objections raised on the other side, supposing them open to discussion. As to the first: no age is specified in the 43d of *Eliz.*, under which this binding is made, or in the 8th & 9th of *W. 3.* which compels the master to receive the apprentice and gives the appeal. Still it is said, that under stat. 5 *Eliz. c. 4.* it is necessary, that the apprentice should be above ten years of age; and that all the subsequent statutes are in *pari materia*. But that statute relates only to *husbandry*, which may require more bodily strength than most other occupations; and that statute cannot be connected with the 43d of *Eliz.*, which was made for the maintenance of the poor. The present case is that of a female child, bound to *housewifery*. In other instances the Legislature has not considered seven as too tender an age. The children of vagrants may at that age be bound out: and the strength and ability of children, which from seven years of age to ten must vary greatly in point of fitness in this respect, is matter of consideration and discretion in the magistrates: and, independent of any statutable regulation, seven years is at Common-law the age of puberty.

As to the usage of not laying this burthen upon incorporeal property, the statute makes no distinction, as to the kinds of property; but the quantum of it sufficiently shews ability here: and, from the nature of his property, the owner of great tythes has at least an equal opportunity of finding employment for an apprentice with a merchant; which was *Minchamp's* case. The usage also may be evidence of unfitness; but to what extent, is for the consideration of the justices; who have made their decision, and I think a right one.

As to the last objection, that the Sessions rejected proof of the indenture's not being signed by the second magistrate, when it was executed by the defendant, I incline to think; that, as the statute prescribes neither the time or mode of assent, it may be well enough, if the assent is given at any time before the Sessions.

Asbburst J.

I intirely concur. The statute does not require any precise age: if so, it is properly referred to the discretion of the magistrates; and this is a much better policy than fixing any certain age. Then as to the second point, the custom of the parish cannot controul the general law of the land. The defendant is stated to have enough of property to enable him to pay; and there is nothing in the nature of that property to exempt him. As to the last

last point, if there be doubt upon it, the general answer, that the defendant has concluded himself by executing the counterpart, goes to that also: and I do not know that we are bound to say, what the statute has not said, that it is necessary for the two justices to assent before the binding. But by entering into the contract the appellant was estopped in limine: he ought to have said, I'll not sign it: I ought not to be so burthened.

Buller J.

There is one point made by Mr. *Lawrence*, to which I cannot agree, at least in the extent to which he carried it; that is, to the justices not signing the indenture at the time of its execution by the appellant. I take it, that, as far back as the matter can be traced, the assent of the justices has always been given by signing: and I should be sorry to have that practice shaken; for otherwise how is any man, upon whom this burthen is imposed, to know whether the magistrates have allowed it or not? In every thing else I agree entirely. I think the appellant is estopped by having executed the counterpart. The question is at what time ought he properly to make his stand? The parish officers tender him the indenture. He must either execute it or appeal, if he has any ground to justify a refusal: but, if he accepts, he is concluded.

Now as to age. This objection seems to be very much founded upon the case of the *K. v. Cleverly*; which, being the case of an apprentice in husbandry and falling under the express words of stat. 5 *Eliz. c. 4.*, may be well distinguished from the present. But still it is contended, that the several statutes in *pari materia* ought to be taken together. Now I do not think, that the statutes, if so taken, warrant the conclusion, that the appellant would draw from them. Take a view of the acts. The first, 5 *Eliz. c. 4.*, says, that a child bound in *husbandry* shall not be under *ten years* of age; but then by the 43d of the same reign a *general* power to bind out poor children is given: and I think it may very well be questioned, whether this statute does not repeal the restrictions in the former statute; and remit the whole consideration of fitness, even in the case of husbandry bindings, to the discretion of the parish officers and magistrates, who are the proper tribunal for such enquiries. Whenever this question is raised, I should wish to know how the practice is. I take it to be universal for parishes to bind out poor children after seven years of age; and, being universal, I should think, that such an interpretation by the whole realm could only have

1784.

REX
v.
SALTREN.

1784.
 Rex
 v.
 SALTREN.

have been on the ground, that the restrictions of the former statute were supposed to have been repealed. Mr. *Fanshawe* had in the course of the argument admitted to me, that the general practice was so. The stat. 2 & 3 Ann, which relates only to sea service and has been insisted upon in support of this objection, furnishes an argument against it. It might occur to the Legislature, that seven years was too early an age for the particular nature of that service, and they enact accordingly; but, if, by reference to the acts in *pari materia*, the earliest period at which they could legally be bound had been ten years of age, then this provision would have been nugatory.

As to the second point, tythes are a property meant to be charged by the statute; and I have said on many occasions, that the usage of a particular district cannot affect the construction of an act of parliament. That must be one and the same in all places. So by analogy the statute of frauds must universally receive the same construction in law and equity.

As to the last point no parole evidence of prior informality could be admitted after the appellant had, as here, concluded himself by his own signature.

Lord Mansfield was absent.

Per Curiam,

Rule discharged and the
 order of Sessions, con-
 firming the indenture,
 Affirmed.

Rex v. the Inhabitants of North Bedburn.

TWO justices by an order remove *John Aylebury, Jane*, his wife and their six children, from the township of *Quarrington* in the parish of *Kelloe* in the county of *Durham* to the township of *North Bedburn* in the parish of *St. Andrew Auckland* in the same county. The Sessions on appeal adjudge the settlement to be at *Quarrington*, confirm the order and state the following case:

Where a
 written in-
 strument is
 not produced,

That in May 1774 the pauper *John Aylebury* and one *Edward Wells* entered into an agreement in writing (of which the follow-
 what distance of time and other circumstances will justify the admission of parole evidence. A Landale Colliery is within the stat. 13 & 14 Car. 2. c. 12. a tenement, and will give a settlement: but the Court will not take notice of the meaning of such technical and provincial terms, unless it is stated.

ing

ing is a copy with *John Westgarth* Esq. since deceased and one *John Smith* now living in *Walsingham*. "Be it remembered, that it is
 "this day agreed by *John Westgarth* and *John Smith* for themselves
 "and partners on the one part and *Edward Welsh* and *John Ayle-*
 "bury of *Argill* in the parish of *Wittan* of the other part; and
 "first the said *John Westgarth* and *John Snaith* for and in confi-
 "deration of the condition hereafter expressed have let to the said
 "Edward Welsh and *John Aylebury* that coal pit, commonly called
 "and known by the name of the Partner's pit, for the term of three
 "months, they the said *Edward Welsh* and *John Aylebury* paying
 "monthly the sum of forty shillings for every month: that, if the
 "said sum of forty shillings for every month be duly satisfied and
 "paid at or before the end or term of three months, then they are
 "to be permitted to continue to work and hold the said pit for
 "three months more, they paying the like sum of forty shillings
 "for every month; but upon neglect of such payment the term
 "to cease and end at the times expressed: but upon due payment
 "of the second three months then the said *Edward Welsh* and
 "John Aylebury to be permitted to continue and work the said pit
 "for three months more on the same conditions, but to end and
 "conclude upon the non-payment of the said sum of forty shil-
 "lings monthly and every month; but upon the due payment of
 "the above sums to be permitted to enter upon and continue for
 "the fourth three months, they paying for every of the last three
 "months the full sum of 2 l. 6 s. 8 d. for such and every of the
 "said three months: that if neglect is made in the payment of
 "the said monthly rents at any time and upon notice left at the
 "said pit and a day fixed in such notice for the payment thereof,
 "and the money not paid pursuant to such notice, then the said
 "John Westgarth and John Snaith or whom they shall appoint shall
 "make seizure of the coals or other things for the payment of
 "the arrears, and them sell and dispose of without any lett trouble
 "or hindrance from them the said *Edward Welsh* and *John Ayle-*
 "bury or any for them; they the said *Edward Welsh* and *John*
 "Aylebury working the said pit fair and not to go beyond our
 "boundary, nor for any person or persons to do it: and they the
 "said *Edward Welsh* and *John Aylebury* further covenant and agree
 "to uphold maintain and deliver at the end or sooner deter-
 "mination of the said several terms the gin and other things
 "below recited and deliver to them in the same state as when they

3 N

"entered

1784.

REX

v.

The Inhabi-
tants of
NORTH
BEDFORD.

1784.
 Rex
 v.
 The Inhabi-
 tants of
 NORTH
 BEDBURN.

"entered upon them. As witness our hands this 10th day of
 "May 1774."

"John Westgarth" "Edward Welsh"
 "John Snaith" "John Aylebury"
 Witnesses "Joseph Watson." "his X mark"

PARTICULARS left with the said *Edward Welsh* and *John Aylebury* viz.

	£.	s.	d.
23 Yards of Tram way under Ground at 10d.	0	19	2
Three Trams.	1	0	0
Tram way above Bank	0	14	8
Ropes 2.	1	0	0
Corf Bowers 11 at 2 s. 3 d.	1	3	9
A Gin	6	0	0
	£. 10	17	7

That under this agreement the pauper and *Welsh* entered upon the colliery, which is in *North Bedburn* township, and continued in the possession thereof eight months; and during that time the pauper resided in a house in the same township for which he paid one guinea a year: that, at or about the expiration of the eight months, the pauper and *Welsh* were 8 l. in arrear for the rent of the colliery, and thereupon Messrs. *Westgarth* and *Snaith*, their landlords, distrained their stock and utensils, and sold them in discharge of the arrears: that the colliery was then laid in, and the pauper has since subsisted by working for hire wherever he could procure employment; and consequently he has not gained any settlement subsequent to the time of quitting the partnership colliery: that two magistrates of the county of *Durham* removed the pauper and his children from *Quarrington* in the said county (where they then resided) to *North Bedburn* township; from which order of removal *North Bedburn* appealed and the appeal came on to be heard at the last quarter Sessions of the peace held at *Durham* the 14th day of *January* last, when the appeal was disallowed: but the evidence whereon it was so disallowed being objected to by the counsel for the appellants, it was agreed, that such evidence and the objections thereto should be fully stated so that the opinion of the Court of King's Bench might be taken thereon: the state made thereof is as follows:

It appeared to the Court from the evidence of the pauper, *John Aylebury*, and also from the evidence of *Edward Welsh*, that the
 pauper

pauper *John Aylebury* and the said *Edward Welsh* in equal moieties, on the 12th day of *May* 1774, entered into the possession of a landsale colliery under certain grounds in the township of *North Bedburn*, called Abbots closes, as tenants for one year to *John Westgarth* Esq., since deceased, and *John Snaitb*, now living, and others by an agreement in writing signed by the said *John Westgarth*, *John Aylebury* and *Edward Welsh* at the yearly rent of 25 l., which was to be paid as follows: 2 l. per month for the first nine months, and 2 l. 6 s. 8 d. per month for the last three months of the term: that the said *John Aylebury* and *Edward Welsh* continued to occupy and work the said colliery for eight months: that they were then distrained upon for the rent due to their landlords, and their goods sold in satisfaction of the said rent; and that they then quitted the possession of the said colliery: that during all the time of their so occupying the said colliery the pauper lived and resided in a dwelling house in the township of *North Bedburn*, which he rented of another person at the yearly rent of one guinea; and that the pauper, *John Aylebury*, has never done any act to gain a settlement, since he quitted the occupation of the said colliery: that there was only one part of the said agreement, and that it was deposited in the hands of the said *John Westgarth*; who, upon application made to him several times before his death, which happened about three years ago, by the said *Edward Welsh*, refused to produce to him the said agreement: that neither the said *John Aylebury* nor *Edward Welsh* know in whose custody the said agreement now is, or whether it is in being or not; neither have they made any enquiry for it since the death of the said *John Westgarth*: And Mr. Hoare, as counsel for the appellants, objected that the parol evidence of the said *John Aylebury* and *Edward Welsh*, of the taking of the said colliery and the terms whereon it was taken, is incompetent under the circumstances of this case, and ought not to be admitted by the Court; but that the said agreement in writing ought to have been produced by the respondents, or some account should have been given of its being lost: but, upon hearing Mr. Ambler of counsel with the respondents, this court is of opinion, that the said evidence is in the present case competent and ought to be admitted, and that it is unnecessary to produce the said agreement, or to give any other evidence respecting it; and that the settlement of the paupers from the evidence above stated has been sufficiently proved to be in the township of *North Bedburn* aforesaid, and doth therefore disallow

1784.
 ~~~~~  
 Rex  
 v.  
 The Inhabitants of  
 NORTH  
 BEDBURN.

Settlement at  
*North Bedburn*  
 allowed.

1784.

REX

The Inhabitants of  
NORTH  
BEDBURN.Saturday,  
May 22d.

the said appeal and order that the said order of removal be confirmed.

*Lee* and *Abbott*, who were to have shewn cause in support of these orders, were stopped by the Court; and *Peckham* and *Lane* were called upon to support the rule to quash them. They contended, that, the settlement in this case depending in one view of it upon a written instrument, and no proof having been offered that it had been lost, destroyed, or even enquired after by the township of *Quarrington*, no sufficient ground had been laid to introduce and warrant the admission of parole evidence respecting it: that, though the existence of the instrument admitted of little or no doubt, and the death of *Westgarth*, with whom it was deposited, was notorious, and consequently his executors might have been applied to; so far from using due diligence to come at it, the township of *Quarrington* had done nothing; and all that had been done was an enquiry by the pauper several years before, and sometime during the life of *Westgarth*: that the danger of relaxing the established rule and principle by receiving such evidence was manifested by the facts of this very case; for the lease was now in the hands of the township of *North Bedburn*: that it would not have been withholden, had it not contained something adverse to the interests of that township; and now it appeared to be a demise not of a tenement merely, but also of a great quantity of personal chattels for working a colliery. That, as the taking a landsale colliery imports the taking of personal property, such as the necessary implements stated in the case, a considerable part of the rent must have been paid for this stock: that its amount is stated to have been ten or eleven pounds; and that, had this appeared at the Sessions, it had been an easy matter to have reduced the rent of that, which in the hands of the pauper was a legal tenement and as such can alone intitle him to a settlement, within the sum of ten pounds a year: that the Court would not intend, unless it was stated, that there was enough of property besides, of a description that would give this right; and therefore that it appeared to be no more than a contract, for stock and implements, chiefly respecting personalty, and similar to taking a dairy of cows. [a]

*Willes*

[a] Under the authority of the *K. v. the Inhabitants of Lockerley*, H. 25 G. 2. 1752. Burr Settl. Cas. 315 and of another case, which went upon a similar principle, cited therein, the law at that time was taken to be so; but that authority, which, in the case of the *K. v. the Inhabitants of Piddletrenthide*, T. 30 G. 3. 1790. 3 Durnf. & East 772., was more than shaken,



*Willes J.*

The only question here is, whether parole evidence of this instrument has been properly admitted? It had expired many years; the lessor had been dead three years; and in his life-time had repeatedly refused a sight of it to the pauper, who knew not where it was, or whether it existed. In this state of things there was so little prospect of effecting any thing by further pursuit, that I think the evidence was properly admitted. As to the probable reduction of this property within 10*l.* a year, the rent appears to amount to 25*l.* a year between two. This is *prima facie* a settlement, and nothing appears to contradict it. We cannot take notice of the meaning, attributed to the term, landsale colliery, and said to be so understood in the North by the trade; unless it were so stated to us.

*Ashurst, J.*

Under all the circumstances there was sufficient foundation laid for the admission of the parole evidence; and, without more stated as to the rent, there is no pretence to say, that 10*l.* a year is not taken, any more than there is to say, that a coal mine is a personal chattel.

*Buller J.*

Had it been in proof, that the executor of the lessor had been in possession of this instrument, it might have varied the case. After the expiration of the lease, the lessee, the pauper, was intitled to it in strictness. But he neither had it or knew whether it existed; and it was now nine years after its expiration. Under such circumstances parole evidence was properly resorted to.

Lord *Mansfield* was absent.

Rule discharged and  
both orders confirmed.

1784.

REX

v.

The Inhabitants of  
NORTH  
BEDBURN.

shaken, has since in the case of the K. v. the Inhabitants of Tolpuddle, E. 31 G. 3. 1791. 4 Durnf. and East 671. been expressly denied; and that adjudication has been recognized in a very recent case, that of Burt v. Moore, T. 33 G. 3. 1793. 5 Durnf. and East 329. See also the cases of the K. v. the Inhabitants of Old Alresford, T. 26 G. 3. 1786. 1 Durnf. and East 358. the K. v. the Inhabitants of Whixley, H. 26 G. 3. 1786, ib. 137, the K. v. the Inhabitants of Stoke, E. 28 G. 3. 1788. 2 Durnf. and East 451, and the K. v. the Inhabitants of Brampton, T. 31 G. 3. 1791. 4 Durnf. and East 348.

# Trinity Term

24 Geo. 3. 1784.

Rex v. James.

In convictions the necessary facts should be charged in the information, and appear there as well as in the evidence. Where the legislature in its language comprehends divers offences under general terms it is not enough to follow in a conviction the words of the statute, but it is necessary to state what particular act prohibited has been committed.

**U**NDER the provisions of the general statute of 22 G. 3. c. 47. s. 13, which enacts, that “in order to prevent all adventuring with lottery tickets, in any such [a] lottery as aforesaid it shall not be lawful for any person or persons, to sell the chance or chances of any ticket or tickets in any such lottery as aforesaid for a day, or any less time than the whole time of drawing in any such lottery; or to insure for or against the drawing of any such ticket or tickets; or to receive any money or goods, in consideration of any agreement to repay any sum or sums; or to deliver the same or other goods, if any such ticket or tickets shall prove fortunate or unfortunate; or on any other chance or event, relative to the drawing of any such ticket or tickets, whether as to their being drawn fortunate or unfortunate, or the time of their being drawn or otherwise howsoever; or under any pretence, device, form, denomination, or description whatsoever to promise or agree to pay any sum or sums, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person or persons, whether with or without consideration on any event or contingency relative or applicable to the drawing of any such ticket or tickets, or to publish any proposal for any of the purposes aforesaid, &c. under the penalty of fifty pounds,” the defendant was convicted. The statute for establishing a [b] lottery, on which the ticket in

[a] Such lottery refers to any state lottery which may be at any time authorised by any act of parliament.

[b] In these convictions it is necessary to alledge, that it is the *state* lottery, the King v. Edward Trelawney, E. 26 G. 3. 1786. 1 Durnf. and East 222.

question

question was sold, and on which this conviction was had, is the statute 23 G. 3. c. 35.

The conviction stated, that “on the 8th day of *December* in the “24th year, &c. at the public office in *St. Martin’s Street*, *John Wilson* of the Stamp Office, Gentleman, who, &c. cometh before us, *James Fielding*, Esquire and *William Hyde*, Esquire, two &c. and as well, &c. giveth us to understand and be informed that after the 25th day of *July* 1782, to wit on the 2d day of “*December* 1783, *John James*, at No. 46. *Great Queen Street* in the parish of *St. Giles* in the Fields in the said county, labourer, not regarding the statutes of our Lord the King, did in the parish “aforesaid in the said county, under a certain pretence or device, “promise and agree to pay a sum of money on the event or contingency “relative and applicable to the drawing of a certain number or ticket “No. 27. on the 15th day of drawing of the lottery, authorized “and established by an act of parliament, made in the parliament “of our said Lord the King at a session thereof holden at *Westminster* in the 23d year of his reign, intituled &c. contrary to the form “&c. whereby &c. the said *John James* hath for his said offence “forfeited the sum of 50 l. of &c. one moiety &c. And the said “*John Wilson* who, &c. prays that the said *John James* may be “convicted of the said offence according, &c. And afterwards to “wit on the 9th day of *December* in the year aforesaid at, &c. the “said *John James* having been previously duly summoned, in pursuance of our summons issued for that purpose, to appear before “us, &c. to answer the matter of complaint aforesaid, contained “in the said information, which is now duly proved to us upon “the oath of *William Brooks*, and the said *John James*, being solemnly called, doth not appear here before us in pursuance of “our summons in that behalf, but therein makes default, and does “not make any defence to the said charge contained in the said “information, whereupon we do now proceed to examine into “the truth of the said complaint contained in the said information, “and thereupon on the same day &c. at &c. *Samuel Collins* and “*William Rode*, two credible witnesses in this behalf, come before “us the said justices, and upon their corporal oaths, &c. now administered to them by us the said justices, we the said justices “having a competent power and authority to administer the said “oath, they the said *Samuel Collins* and *William Rode* depose and “say, and first the said *Samuel Collins* saith, that he did on the 2d day “of

1784.

REX  
v.  
JAMES.

1784.

—  
 REX  
 v.  
 JAMES.

“ of *December* instant at &c. insure with the said *John James* a  
 “ certain ticket No. 27, as to such number not being drawn on the  
 “ 15th day of the drawing of the said lottery; in consideration  
 “ of which he the said *Samuel Collins* paid to the said *John James*  
 “ the sum of 1s. and 1d. and for which the said *John James* pro-  
 “ mised to pay to the said *Samuel Collins* the sum of one guinea,  
 “ provided the said number was drawn on the said 15th day of  
 “ drawing the said lottery. And the said *William Rode* saith, that  
 “ he has known the said *John James* for many years, and that he  
 “ was present, and did see the said *John James* insure the said num-  
 “ ber with the said *Samuel Collins*: whereupon all and singular the  
 “ premisses being considered, and mature deliberation being there-  
 “ upon had, it manifestly appears to us the said justices, that the  
 “ said *John James* is guilty of the offence above charged, upon  
 “ him in and by the said information, according to the form of  
 “ the statute, &c. And we do award and adjudge, that the said  
 “ *John James* hath for his said offence forfeited and do pay the  
 “ sum of fifty pounds of lawful money, &c. to be distributed,  
 “ and to go and be applied, one moiety to the use, &c. and the other  
 “ to, &c. &c. according, &c. In witness, &c.

Wednesday,  
 June 16th.

Upon the ground, that the information, as here laid, was too general in not properly specifying the fact, or setting out any of its particulars, as the sum received, the pretence, the person with whom the insurance was made, &c. *Bearcroft* had obtained a rule to shew cause, why this conviction should not be quashed.

And now *Peckham* and *Wood*, in answer to this objection, contended; that it was sufficient, as it pursued the words of the act: that the summons was regular: that the defendant did not appear, and that the evidence was positive: that the offence, as applicable to this statute, consists in making the promise to pay a sum of money: that that was set out with sufficient certainty and precision: that it is not necessary to set out the pretence or device, as that is not the essence of the offence; and, if these words had been totally omitted, the promising of the money would have made the offence complete; and consequently that the rest can only be surplusage.

*Willes J.*

In summary convictions the charge must be precisely set out. This is general; and does not point out that, against which the party is to defend himself. The evidence cannot go further than the charge. You should have alleged the fact in the information  
 in

in the same manner, as you have in the evidence. As to the defendant's not coming in upon the summons, he was not obliged to do it: the charge was too indefinite to call upon him to answer it.

1784.  
REX  
v.  
JAMES.

*Ashurst J.*

It is not enough that the crime is proved; it is not enough that there is evidence of it: it is necessary, that the charge [a] should state it. In an indictment for obtaining money by false pretences, it is necessary to specify the pretence.

*Buller J.*

It is not true that, in framing a conviction, it is sufficient to follow the words of the statute in all cases. In some indeed it may, as where the statute gives a particular description of the offence; but it is otherwise where a particular offence is included under a general description: where a particular act constitutes the offence, it may be enough to describe it in the words of the legislature; but, where the legislature speak in general terms, the conviction must state what act in particular was done by the party offending, to enable him to meet the charge. The offence here is promising under certain circumstances to pay so much money. Some circumstance then must be shewn: it must be stated, for what the money is so promised to be paid, or the defendant is on such charge perfectly innocent: and the sum is uncertain; for what it is, is not stated. There is besides a most material objection, that the contingency is not stated; whether the money promised is to be paid upon the ticket's being drawn a blank or a prize.

Lord Mansfield was absent.

Conviction quashed.

[a] See the case of the K. v. Harry Green, H. 24 G. 3. 1784. ante p. 391.

### Rex v. Inhabitants of Bradninch.

TWO justices by an order remove *Richard Mogridge, junior, Hannah, his wife, and their daughter* from the parish of *Gittisham* in the county of *Devon* to the parish of *Bradninch* in the  
Upon a general leave given by his original master to an apprentice to go and work, wherever he pleases, the knowledge and approbation of any particular services, though such knowledge does not reach the master till after the contract for such service is made, makes such service a service under the indentures.

1784.

REX

The Inhabi-  
tants of  
BRADNINCH.

same county. The Sessions on appeal confirm the order, and state the following case:

That the pauper was born in, and also bound an apprentice by, the parish of *Bradnoch* to *Christian Hill*, until 24 years of age: that he continued to live with his master until twenty-two; when the master agreed, that if he would give him one guinea in hand, and two guineas more (being one guinea a year) during the residue of his apprenticeship, the pauper should go, and serve where he pleased: but the master said, that he would not deliver the indenture, nor discharge him from his apprenticeship; for he considered him as his apprentice still: the pauper agreed to this, and paid his master a guinea in hand, and went into the parish of *Gittisham*, and lived with his father, and paid him six-pence a week for his lodging: that he hired himself as a labourer to *Miss Saintbill* by the day, and continued to lodge with his father and serve *Miss Saintbill*, till the expiration of his apprenticeship: that, at the end of the first year of his serving *Miss Saintbill*, he went to his master *Hill*, and paid him one guinea for that year, according to the agreement: that his master said, "you continue to work for *Miss Saintbill*: I think it a very good place, and hope you will continue in it:" that at the end of the second year he went and paid his master the other guinea; who said, you still continue to work with *Miss Saintbill*: he replied, he did; when his master said, he would look out for the indenture and give it him: that the pauper did not know there was any conversation between the master and *Miss Saintbill* respecting the apprentice; but that *Miss Saintbill* knew the pauper was an apprentice; and that she had enquired his character: that he had always the *Sundays* to himself, and lodged with his father in *Gittisham*.

Settlement at  
*Gittisham*.Saturday,  
June 26th.

*Clapp* shewed cause in support of these orders, and contended; that there was no act stated, that would give the pauper a settlement: that the only ground made was, that this was a virtual service under the indenture with another person, though there had been no express consent to it by the master: that the authorities prove, that nothing less than an express consent to the particular service is sufficient; and to this point he cited [a] the *K. v. the Inhabitants of St. Luke's in Middlesex*, [b] the *K. v. the Inhabitants of St. Mary*

[a] Tr. 5 G. 3. 1765. Burr. Settl. Caf. 542,  
[b] Tr. 21 & 22 G. 2. 1748. Ib. 274.

*Callendar in Winchester*, [a] the K. v. the Inhabitants of *Austrey* and [b] the K. v. the Inhabitants of *Ideford*. That an express consent must be a permission given to serve some one person; to serve *A.* and not twenty other persons: that this leave given must necessarily have such a restriction, or there could be no difference between a particular and a general consent. It imports an exclusion of all other persons.

1784.

REX

The Inhabitants of  
BRADNINCH.

That when "a master does license his apprentice to leave him, he cannot after recall that license:" that this was so laid down by *Holt*, Ch. J., in the case of [c] *Barber v. Dennis*: and there could not exist any special license here; or, if there could and it had any effect, it went to dissolve the apprenticeship; because, if the master could not recall, he certainly could not restrain or narrow, that general consent, which he had long before given: and consequently that no special license had, as none legally could, be given.

*Morris and Fanshawe*, in support of the rule to quash these orders, admitted, that it was true, that the master must both know and consent to the particular service; but insisted; that such consent may be inferred from circumstances; may be implied, and need not necessarily be expressed: that [d] the K. v. the Inhabitants of *Offerton* had gone much further; and that there was here both express approbation and a recommendation to continue in the same service. That, so far from having done any thing equivalent to vacating the indentures, the master had here expressly refused so to do; and on the contrary reserved to himself throughout the term a proportion [e] of his apprentice's earnings.

The Court stopped Mr. *Fanshawe*; and, being all clearly of opinion that there was in this case, with knowledge of the particular service, a consent and more, a very strong approbation of it, directed, that the rule should be

Absolute and  
Both orders quashed.

[a] H. 31 G. 2. 1758. Ib. 441.

[b] H. 16 G. 3. 1776. Ib. 821.

[c] M. 2 Ann. 6 Mod. 69. Bott. 167. 1 Const. 458.

[d] E. 15 G. 3. 1775. Burr. Settl. Cas. 802.

[e] On this point see note to the case of the K. v. the Inhabitants of Langham, ante fo. 129.

1784.  
 ~~~~~  
 REX
 v.
 The Inhabi-
 tants of
 BRADNINCH.

To this point see the case of the *K. v. the Inhabitants of Langham*, M. 22 G. 3. 1781, *ante* p. 126., and the subsequent cases of the *K. v. the Inhabitants of Harberton*, H. 26 G. 3. 1786. 1 *Durnf. & East* 44. *Const.* 2. 576., the *K. v. the Inhabitants of Sandford*, Tr. 26 G. 3. 1786. 1 *Durnf. & East* 281, the *K. v. the Inhabitants of the Holy Trinity in the Minorities*, E. 30 G. 3. 1790. *lb.* 3. 605. and the *K. v. the Inhabitants of St. John the Evangelist in Brecon*, M. 33 G. 3. 1792. *Nolan* 165.

Rex v. Coode & al. Churchwardens and Overseers, &c.
 of Penrhyn.

TWO justices allow two rates made for the relief of the poor of the borough of *Penrbyn* in the county of *Cornwall* upon the 18th day of *December* 1783 and the 5th day of *January* 1784 respectively.

The provisions of the St. 17 G. 2. c. 38. § 4. for repeal the St. 43 Eliz. c. 2, as to limit the appeal against the poor's rate to the next sessions.

Upon the appeal of *William Crowgey* and others, inhabitants of the said borough, made against both these rates, under a notice bearing date *the thirteenth day of January* 1784, and alleging that they were aggrieved, for that the said rates were upon the face of them informal and void, especially as being partial, unequal and illegal, in that there are several persons put on each of them, having no property whatever within the said borough to intitle them thereto, and that there are several persons resident within the said borough, having rateable properties therein and having a right to be put upon each of the said rates for the same, but who are nevertheless therein omitted, and further in that the said rates for such the aforesaid insertions and omissions are injurious to the appellants in respect of their rights and franchises as voters and electors for members to serve in parliament for the said borough, the Sessions, holden *on the fifteenth day of January* 1784, dismiss the said appeal for the insufficiency of the notice.

Upon the appeal of *William Crowgey* and others, made against both these rates, under a notice bearing date the *12th day of April* 1784, and alleging and insisting that they are aggrieved, in that *their last appeal to the said rates was dismissed for want of a proper notice and not adjourned and continued over to the then and now next ensuing Sessions*, as it ought to have been, they specify, *that they will prosecute and procure the same*, which they had carried to the

the last Sessions, *to be heard upon the merits* and at such hearing at the next Sessions shall insist, that they are aggrieved in those instances, in which they had complained in their former notice: in this notice they in each instance specified the names of the persons, improperly, as they alleged, inserted and omitted; as they also did the names of certain premises also charged to have been improperly omitted. The Sessions, holden on *the 22d day of April*, took into consideration, whether they were competent to rehear a matter of appeal, dismissed at the last Sessions for insufficiency of the notice; and determined, that such appeal could not be reheard. The appeal was accordingly dismissed; and the Court ordered the appellants to pay the sum of 100*l.* 6*s.* 8*d.* to the respondents for their costs.

1784.
~
Rex
v.
Cooper.

Upon another appeal of *William Crowgey* and four others, under a notice bearing date the 13th day of *April* 1784, made against the aforesaid rate of the 5th of *January*, and also an appeal of the same parties under a notice bearing date the 27th day of *January* 1784, made against both the aforesaid rates, and another appeal of two of the same parties under a notice bearing date the 13th day of *January* 1784, made against both the aforesaid rates, and alleging, that they were aggrieved, in that different persons or premises, therein specified, were as they alleged improperly inserted or omitted, the Sessions, holden on the said 22d day of *April*, in each of the said three appeals, "took into consideration whether an appeal can be received by the court of Quarter Sessions against a rate on the statute of the 43d of *Eliz.* at any other Sessions, except the next after making such rate, considering the statute of the 17 *Geo.* 2.;" and determined, that such appeal could be received. They then ordered, that the two rates aforesaid be quashed for insufficiency, and that the respondents pay to the appellants in each of the above appeals the sum of 1*l.* 6*s.* 8*d.* for their costs.

Wilson, J. having obtained a rule to shew cause, why the three last orders of Sessions, made on the 22d day of *April* 1784, confirming the appeal against the two rates aforesaid, should not be quashed for the insufficiency thereof,

Bearcroft, Morris, and Batt shewed cause in support of these orders. They stated, that the decision of the present question was interesting to the public, as it involved in it the claims of the parties to important rights and franchises: that *Penrbyn* sends two members to parliament; and is a scot and lot borough, in which of course the rates must constitute the right of election: and that, as these

Saturday,
June 26th.

1784.

REX
 v.
 COODE.

these are made by overseers appointed by the resident justices, who are in this borough a part of the corporation, it seems a duty incumbent upon the Court, narrowly to investigate the manner in which officers so delegated have conducted themselves: that the rates in dispute were made on the 18th of *December* 1783 and 5th of *January* 1784, at the time of a rumour of the dissolution of parliament: that an appeal was lodged against each of these rates at the next Sessions holden on the 15th of *January* 1784: that the last rate of the 5th of *January* was not published till the 11th: that a copy was demanded and not given: that notice of appeal was given on the 13th: that, a copy of the rates not having been given, the notice, as the appellants did not know who were inserted or who were left out of the rates, was necessarily general; and that the next Sessions on the 15th dismissed the appeal for the want of sufficiency, *i. e.* for this generality, of the notice: that in *April* following the parliament, as was foreseen, was dissolved: that the validity of these rates was then again questioned by the appellants; and, under fresh notices of appeal against them, the Sessions were of opinion, that the appeal under the statute of *Eliz.* was still open; and accordingly entered into the merits and quashed the rates: and, (whether the Sessions had or had not done right in dismissing the first appeal, because the names of the persons objected to were not, under the peculiar circumstances of the case, inserted) they insisted, that there was no pretence for the objections that had been made to their last orders: and these objections, were either that the statute 17 G. 2. c. 38. § 4. had repealed or suspended the 43 *Eliz.* c. 2.; or that, after an appeal had been had upon the first mentioned act, and had failed for want of sufficient notice, the other could not be resorted to.

That the first point, that the statute 17 G. 2. had not done away the 43 *Eliz.* and confined the appeal against the poor rate to the next Sessions, seemed to be fully settled: that under the [a] authorities there can be no doubt whatever, but that originally the appeal under the statute 43 *Eliz.* might be to any Sessions: that the statute 17 G. 2. could not have varied it: that it contained no negative words; and that it had been determined in *Dr. Foster's* case, [b] that an act worded affirmatively and in *pari materia* "shall

[a] *Q. v. the Parish of St. Giles*, M. 8 Ann. 1709. 11 Mod. 259. *Case of the Borough of Warwick*, M. 8 G. 2. 2 Str. 991. *The King v. Bouen*, E. 1718. *Poor Settl.* 85.
[b] 11 Co. 62. b. 63.

not repeal or abrogate a precedent affirmative law, unless it is contrary in matter: that this is not so; and therefore that both may well stand together: that these are the very words of Dr. Burn, [a] speaking of the operation of this statute on appeals to over-seers' accounts: and that he adds, "the appeal is not limited to the next Sessions, but may be at any time after;" and that the only difference was, that, if the appeal is at the next Sessions, and under the last statute, the Sessions are empowered to give costs; which, if it is longer delayed, they have no authority to award under the stat. 43 Eliz.: that the Legislature had herein made a reasonable distinction, and said, if the party prefers his complaint immediately and as soon as he feels himself aggrieved, he shall have his costs; if he lies by, he shall not: that, from the circumstance of their having given costs, it may be said, that the justices have acted under the stat. of 17 G. 2.: that so far this was wrong; but that an order may be good in part and bad in part: that this therefore did not vitiate it altogether; and that they have in terms stated their doubt upon the statute 43 Eliz.: that the appeal against poor rates is given by the same clause and in the same words; and that the practice throughout the realm was conformable to the above opinion, and appeals were brought at any Sessions: that, independent of any of the particular circumstances of this case, grievances of this sort are commonly not felt till *after* the next Sessions; and that it was therefore for the furtherance of justice, that the appeal should be open: and that the case of [b] the *K. v. the Justices of Berkshire*, which had been alluded to by the court, would be found to have little or no application to the present.

That on the second objection, that, after one appeal on the 17 G. 2. has been dismissed for the defect of notice, a second cannot under 43 Eliz. be resorted to, they insisted; that it was contrary to every principle of justice, that by a mere slip or error, clerical or judicial, by the agent of the parties or the Court itself, the parties should be concluded for ever upon the merits: that it was neither the spirit of the law or the mind of the Legislature, that important rights should be extinguished, or the course of justice prevented

1784.

REX
v.
COODE.

[a] 3. 760, 61. Edit. 1793.

[b] H. 27 G. 2. 3 Douglas on Elections. 132. This note was copied from the MSS. of the late Lord Ashburton, Mr. Dunning; and is inserted in Mr. Conil's Decisions 1, 225.; where also p. 224. the same case under another name, that of the *K. v. St. Helens in Abingdon*, is to be found. It is also reported under this name in Sayer 118.

by

1784.

REX
v.
COODE.

by an inaccuracy [a] in the form of a notice, or the hasty decision of magistrates upon that form: and that there could not be any sound reason given, that they should here be in a worse situation than plaintiffs in civil actions; who if they failed in point of form were non-suited, and might begin again.

Lord Mansfield.

It is true, that the first act does not prescribe any limitation; and under that therefore, while it was the only existing statute upon the subject, you might have appealed at any time: but by the last act the justices are directed to "hear and finally determine the same."

Batt. The same clause also directs, that if reasonable notice of appeal is not given, the justices shall adjourn to the next Sessions, and then "finally hear and determine:" that here in fact the time was too short, it was only two days, to enable the appellants to give reasonable notice before the *Epiphany* Sessions; and that the Sessions therefore ought to have reposit the appeal.

Bearcroft then referred to the *Pevensey* case, as a direct authority to shew, that appeals might be received at any time; and, the general practice being also strongly insisted upon, Lord Mansfield said, it might be material to inquire into the usage. It accordingly stood over for this purpose.

Tuesday
June 29th.

Batt now read a MS. note of [b] the *Pevensey* case, in which Lord Mansfield, was stated to have said. This being an appeal under

[a] And in the case of a conviction, where, on the appellant giving ten days notice in writing of his intention to bring an appeal and of the matter thereof, a right of appeal, within six months after the cause of complaint shall have arisen, is given, the court of K. B. held that the appellant, having lodged his appeal without complying with the requisites to make his notice legal, and the appeal having been accordingly dismissed, is thereby concluded; although the appellant had been prevented by a mere slip from entering into the merits, and the six months, within which there otherwise would have remained a jurisdiction in the Sessions to give him relief, were not elapsed. Rex v. the Justices of the West Riding of Yorkshire, Tr. 30 G. 3. 1790. 3 Durnf. & East 1776. 150

[b] R. v. Lord Ashburnham, E. 15 G. 3. 1775. The court made the rule absolute for quashing several orders of Sessions for the liberty of Pevensey in Sussex, by which the justices dismissed appeals against overseers' accounts for several years as coming too late, not being made to the next sessions. The court were of opinion, that, as the proceedings might be under the 43 Eliz., the defendant might appeal at any time, and therefore quashed the order of dismissal: and Aston J. cited a case, in which the court had been of that opinion before, though he thought great inconvenience might arise from trying appeals at a long distance of time. There was another order of Sessions before the court, which had confirmed the accounts of the last year, against which the appeal was at the next Sessions. To this it was objected by Dunning, that the Sessions had allowed in their accounts several illegal charges, particularly a charge of upwards of 8l. for a treat at a public house, which was admitted to be an illegal demand;

under the 43 *Eliz.* may be prosecuted at any time; and that *Aston* J. said there was no limitation. He then stated the practice in *Staffordshire, Berkshire, Surrey and Dorset*, as agreeable to his representation of it: that it was a point that had not frequently occurred; and that in the West Riding of *Yorkshire* the usage was against him. He then contended, that the next Sessions must mean the next possible Sessions: that such was [a] the case of the *K. v. the Justices of Gloucestershire*: and [b] the *K. v. the Justices of the East Riding of Yorkshire*: that to every purpose of justice, this was in the present case the next Sessions; for the rate was made the 5th of *January*, published the 11th, a copy immediately demanded, and this not being complied with, a general notice, the only then possible one, given on the 13th, the Sessions being on the 15th.

1784.

REX
v.
COODE.

Lawrence contra observed, that this argument overlooked the rate of *December* 28th, which raised the same questions; and against which there was full time and means to have prepared proper notices of appeal.

Ashburst J.

But, supposing this not so, the order does not upon the face of it shew any principle of justice violated; and therefore if you applied to the justices to have this circumstance, i. e. the order of time in which these acts arose and followed each other, put into the case and they refused to do so, your remedy is by motion for an information.

Wilson J. in support of the rule to quash these orders insisted; as there could be no doubt but that appeals under 17 G. 2. must be at the next Sessions, so it was a proposition as clear as any that his mind ever contemplated, that by this statute that of the 43 *Eliz.* was superseded: that the very object of the Legislature in passing the latter act was to remedy the mischiefs and delay created by the generality of the appeal under the former: that every provision of the act of this Session of Parliament seemed to point to that end, and limit the appeal to the next Sessions: that in c. 3. it had with this view been ordained, that publication of the rate should, as necessary to its validity, be made at church on the next *Sunday* after it had been

demand; and on that account the order of confirmation at the Sessions was quashed: and per *Aston* J. there cannot in these cases be any allowance for time and trouble, but merely for disbursements out of pocket.

[a] E. 19 G. 3. 1779. *Douglas* 182.

[b] *Ib.* 183.

1784.

~

REX

v.

COODE.

allowed; and, by the statute under discussion, a copy of it is directed to be given for a small sum.

Lord *Mansfield*.

As at present advised, I think, the 17 G. 2. repeals the 34 *Eliz.* as to the time of appealing. [a]

Willes J.

It is by no means clear to me, that the latter statute was meant to repeal the former; and I on the contrary incline to that interpretation which the practice has given, and which appears to have prevailed much more generally in extending the right of appeal than in narrowing it to the next Sessions.

Ashburst, J.

It does not strike me, that any rule, which should be considered as obligatory, ought to be taken from an usage that is by no means uniform; and it appears to me as a sort of contradiction not easy to be reconciled, that, when a prior act had given a power of appeal indefinite and unlimited, a succeeding one should, with many minute directions to facilitate appeals, direct them to be carried to the next Sessions, without having it in contemplation to restrict and confine them to such Sessions.

Buller, J.

This seems to have been the main aim and policy of the Legislature in their additional provisions.

Rule absolute, and
All the three Orders quashed.

[a] And this has been so adjudged in subsequent cases. R. v. the Inhabitants of Micklefield, H. 25 G. 3. 1785. post; and R. v. Atkins, M. 31 G. 3. 1791. 4 Term Rep. 12.

Michaelmas Term

25 Geo. 3. 1784.

Rex v. Inhabitants of Sharrington.

TWO justices by an order remove *Robert Lound* from the parish of *Leatheringfett* in the county of *Norfolk* to the parish of *Sharrington* in the same county. The Sessions on appeal confirm the order and state the following case :

That the pauper, having gained a settlement in the parish of *Sharrington* before *Michaelmas* 1782, let himself for a year to Mr. *Hardy* of the parish of *Leatheringfett*, beer brewer : that he was to drive the best team out with beer and do what he was bid : that Mr. *Hardy*, his intended master, asked him if he could sow, as he might have twenty acres of wheat : that he sowed about two acres and went about ten journies to plough : that he continued in his master's service for seven weeks, at the end of which time, when he was driving the beer waggon, he fell off and broke his thigh in the parish of *Buxton* : that, when he was so driving, he was standing on the shafts of the waggon and was in liquor ; that the pauper could not tell, but he might have met with the accident if he had been sober : that he was taken up and carried by the parish officers of *Buxton* to the *Norfolk and Norwich* Hospital, where he continued twenty-nine weeks : that, when he had been there about three weeks, Mr. *Hardy* went to him, and told him if he wanted any thing to let him know it : that when he, the said *Robert Lound*, left the Hospital, he went to *Sharrington* aforesaid, being on a *Saturday* night, and that the next morning he went to Mr. *Hardy*'s : that Mr. *Hardy* refused to take him, and offered to pay him for the seven weeks and make him a present, which the said pauper

After forty days service under a hiring for a year, a servant, who by an accident when in liquor is disabled from further service, gains a settlement.

1784.
 REX
 v.
 The Inhabi-
 tants of
 SHARRING-
 TON.

Settlement at
Leatheringsett.

Saturday,
 Nov. 13th.

refused to take; and thereupon Mr. *Hardy* said he would go to Mr. *Jewell's*, a neighbouring justice: that the pauper returned to *Sharrington* aforesaid, and on the *Friday* following the pauper and Mr. *Hardy* went to Mr. *Jewell's*, but nothing was done: that he, the said pauper, returned to *Sharrington*, where he continued upwards of fourteen weeks; and then, by an order dated the 30th day of *September* 1783, under the hands and seals of *Edward Jewell* and *Zurishadai Girdlestone*, Esquires, two of his Majesty's Justices of the peace for the said county, he was sent to Mr. *Hardy*, who then also refused to take him under the said order; but the pauper continued in the said parish of *Leatheringsett* from that time at a public house, till removed by the above order of Sir *Edward Ashley*, Bart. and *William Wiggett Bulwer*, Esquire: that *Hardy* had another man and a lad in his husbandry service, during the time the pauper lived with him: that he the pauper did no work for Mr. *Hardy* after he came out of the Hospital: that he went on crutches, and was at that time and still continues incapable of doing work.

No one appearing in support of these orders, after *Bearcroft*, in support of the rule for quashing them, had stated, that it was a hiring for a year, under which there had been a service for forty days, soon after which the pauper had by an accident been prevented from performing any further service, though the contract had not been discontinued, [a]

Per Curiam,

It is a clear case.

Rule absolute and
 Both orders quashed.

[a] But where a servant is prevented by illness, the visitation of God, from completing his service, and is taken by his father to his house in another parish, his settlement is not in his father's parish, but in the parish in which he inhabited the last forty days in the service of his master. The *K. v. the Inhabitants of Sutton*, Tr. 34 G. 3. 1794. 5 Durnf. and East 657.

Rex v. Inhabitants of Ealing.

An order un-
 appealed
 from is con-
 clusive.

TWO justices by an order remove *Ann Chetwyn*, widow, and her two children, from the parish of *Barking* in the county of *Essex* to the parish of *Ealing* in the county of *Middlesex*. The Sessions on appeal confirm the order and state the following case:
 That

That in the year 1733 a certificate was granted by the parish of *Ealing* to the parish of *Barking*, acknowledging *Joseph Cbetwyn* to be their inhabitant, legally settled in the said parish of *Ealing*; under which certificate he resided in the parish of *Barking*, where his son, *Thomas Cbetwyn*, was born. Sometime afterwards *Ann Cbetwyn*, the pauper, wife of the said *Thomas Cbetwyn*, went with her children to reside in the parish of *St. Matthew Bethnal Green*; from which parish they were removed in *September 1779*, as likely to become chargeable by an order of two justices to the said parish of *Barking*, as the place of their last legal settlement; from which order the said parish made no appeal. That the pauper and her family remained in the said parish of *Barking*, from the time of their being so removed from the said parish of *St. Matthew Bethnal Green*, until the 2d day of *August 1783*; when the said paupers were removed by an order of two justices under the said certificate from the said parish of *Barking* to the said parish of *Ealing*; to which order the said parish of *Ealing* have appealed: and the Court upon hearing the appeal confirmed the said order of removal.

1784.
Rex
v.
The Inhabitants of
EALING.

Settlement at
Barking.

Fanshawe J. shewed cause in support of these orders; and cited the case of [a] the *K. v. the Inhabitants of Osgathorpe*, to shew that the judgment of the Sessions upon the removal of a certificated person, which stated no more than appeared in the present case, *i. e.* that he was likely to become chargeable, did not conclude upon the question of settlement.

Saturday,
Nov. 13th.

Per Curiam,

There is nothing in it. It is an order unappealed from.

Rule absolute and
Both orders quashed.

See the *K. v. the Inhabitants of Towcester*, *H. 25 G. 3. 1785*, post. In the case cited of the *K. v. Osgathorpe*, the parish of *Bethnal Green*, to whom the pauper had not been certificated, was at liberty (which between the parish certifying and parish certificated to, is not the case) to remove, when the pauper was likely to become chargeable; and, as there was an appeal in that case, in which it was shewn, that the removal was irregular and without which the appellant the parish certifying would have been concluded, it had no application to the present case.

[a] E. 19 G. 2. 1746. Burr. Settl. Cas. 261.

Rex v. Inhabitants of Long Wittenham.

A cottager's widow, by residence during her quarantine, acquires a settlement, and communicates it to her children.

TWO justices by an order remove *Jane Westall*, widow, and her three children, of twelve, ten and eight years of age respectively, from the township of *Upton* in the county of *Berks* to the parish of *Long Wittenham* in the same county. The Sessions on appeal confirm the order, and state the following case:

That *John Westall* and *Jane*, his wife, being certificated from *Long Wittenham* to *Upton*, went about the year 1764 to reside in *Upton* under such certificate; and that in the year 1765 the said *John Westall* purchased a cottage with a small piece of garden ground for the sum of 5 l. in *Upton*, and continued to live in that tenement with his wife and family under the same certificate until the time of his death, which happened on the 15th of *Februdry* 1784: that during such residence at *Upton* he had a family of the following children; namely *John*, his eldest son, *William*, *Mary* and *Rachael*: that a short time before his death the father and all his family, except *Rachael*, were seized with the small pox: that *Rachael*, being free from the infection, was removed to the house of a brother-in-law within the same parish to stay until the family should be recovered from the disease, and was then to return home to her father's family; which she never did before the said removal from the parish of *Upton*: that the father and the family became actually chargeable to the parish of *Upton* a little before the father's death; and the family continued so till the removal: that the father died of the small pox upon the 15th of *February* intestate, being at the time of his death seized in fee of the said cottage and garden, leaving the pauper *Jane Westall*, his widow, *John* his eldest son and heir at law of the age of nineteen years, and *William*, *Mary* and *Rachael*, his only children then surviving, of the respective ages stated in the order of removal hereunto annexed: that *Jane* the widow, *William* and *Mary*, were ill of the small pox at the time of the father's death: that the said pauper, *Jane Westall*, together with all the children aforesaid (except *Rachael*) were residing upon the said tenement at the time of his death, and continued and constantly resided thereon for the space of ten weeks: at the end of which time the said *Jane Westall*, together with the said *William*, *Mary* and *Rachael*, were removed from the township of *Upton* to the parish of *Long Wittenham*. The

Sessions,

Sessions, considering the widow's right to reside forty days after her husband's death, as not gaining her a settlement in *Upton*, confirmed the order.

Milles and *Abbot* shewed cause in support of these orders; and *Milles* contended, that the exercise of the right of quarantine would not give a settlement to any widow, and much less the widow of a person certificated, in the parish where she lived under such certificate; and further, that, if the widow did intitle herself, she could not communicate a settlement to her children, or if to the others, not to *Rachael*, who was not at the time one of her family. That the quarantine did not so intitle, he inferred from the nature and object of it: that it vested no property in the widow whatsoever, but was merely a present provision for her, who had before been supported out of her husband's estate, till, on assignment of dower, which is directed to be within that space, she should be enabled to find a home for herself; for that, previous to this provision, by *Magna Charta c. 7.*, she was liable to be turned out [a] immediately by the heir: that a provision by the Barons for the inhabitant of a castle, a capitale messuagium, or as it is rendered in the statute, "the chief house," did not seem to be at all applicable to the certificated inhabitant of a cottage of the value of 5 l. only; or was it likely, that those who framed this law had interested themselves about the assignment of dower in such property: that the quarantine was not of sufficient duration to give a settlement: that, as it was laid down by Lord *Coke* "that the day wherein the husband dieth, shall be accounted the first day, so that she shall have but 39 days after," she had this privilege only for thirty-nine days and a fraction: that, to gain a settlement, it was necessary to have been in a state irremovable for the *whole space* of forty days; and that here, as they were become chargeable, all this family were removable throughout as much of the day of the father's death, as had elapsed previous to the moment of its taking place; and but for the critical nature of their illness, would undoubtedly have been removed: that the language of the Legislature, in a statute, 13 and 14 *Car. 2. c. 12.*, which with particular attention to that subject describes the duration of time necessary, upon the ground of residence, to give the right of settlement, ascertains the forty days in such marked and precise terms, as cannot by a residence of less than the whole and intire space be possibly satisfied: that it em-

1784.

REX
v.

The Inhabitants of
LONG WIT-
TENHAM.

Settlement at
Upton.

Wednesday,
Nov. 24th.

[a] 2 Inst. 17.

1784.
 Rex
 v.
 The Inhabi-
 tants of
 LONG WIT-
 TENHAM.

powers parish officers to remove paupers *within* forty days after they come to settle, &c. to the place "where they were last legally settled *for the space* of forty days *at the least*:" that this full term of forty days at the least could not have been compleated in the quarantine, part of a day being wanting at the beginning of the necessary space of time: that no greater fruit therefore could be derived from the right of quarantine than would accrue to a pauper, who under the stat. 13 and 14 Car. 2. had come to settle upon a tenement of 10*l.* a year, and had resided thirty nine days and a half; and that there half a day at the least would be wanting, and he would therefore at such time be an object of removal: that it may be said the law makes no fraction of a day; but that, in pronouncing upon this maxim, the law has always taken into consideration the subject matter; and has holden it inclusive or exclusive, so as to give effect to what appeared to them to be the aim of those who framed the law, upon which the construction was made: and he referred to [a] various authorities in support of this proposition; and added, that he had conceived himself at liberty to discuss the law upon the subject of quarantine, notwithstanding the authority of [b] the *K. v. the Inhabitants of Painswick*; as the question in that case had not been argued, nor was it material to the main point made, the derivative settlement of the pauper's family.

He then contended, that, as a certificated person, the widow could not here under the statute 9 & 10 W. 3. c. 11. acquire a settlement: that all the cases of descent, devise and surrender of copyholds, that have been construed to be exceptions, proceed on the idea of an interest actually existing in the property: that here is no ownership in or command over the property: that it is a bare right of personal commorancy; and that no authority can be produced, in which such a permissive enjoyment has been adjudged to give a settlement.

That being irremovable and gaining a settlement by residence are by no means convertible terms: that in general the cases, in which [c] they are so considered, go upon the same principle with that, which gives rise to the right of quarantine; *viz.* the necessary provision of persons not by law otherwise provided for.

[a] 2 Hawk. P. C. 163. Hob. 129. 1 Ld. Raym. 480.

[b] Tr. 14 G. 3. 1774: Burr. Settl. Caf. 783.

[c] Carth. 449. 1 Ld. Raym. 395. 2 Salk. 482. Cald. 6. Burr. Settl. Caf. 2. Carth. 279. Burr. Settl. Caf. 412.

He then contended, that she could not give a derivative settlement to the two children who were with her, and much less to the child not in the house: that with respect to the two, who remained with her in the cottage, they could derive nothing from a mother, who had herself only a mere personal right of residence there: and that, in all the cases where children had been adjudged to follow their mother's settlement, they were under circumstances different from the present; and that such were cases in which [a] they removed after their father's death, and to a place in which their mother was herself unquestionably settled: and it was further contended by *Milles* and *Abbot*, that the other child, who never after the father's death made a part of her mother's family, was a certificated person above age of nurture, was actually chargeable, and also sent away from the certificated parish, could not claim any right of settlement derivatively from her mother.

Bearcroft and *Simeon*, in support of the rule to quash these orders, insisted, that the point had been decided and upon the clearest principles: that to be irremovable and be in a situation to gain a settlement were generally the same things: and when this was so, it was not, as had been said, on the principle of making a provision for those who would otherwise be without any; and that such was not the case either of a certificated person or one residing upon a purchase under the value of 30 l. and not actually chargeable.

That when a day was divided and the question was whether it was to be taken as inclusive or exclusive, it had been admitted and shewn, that the construction of the law was always governed by the intention of the framers of it; and that there existed no maxim in any branch of the law more universally conceded, than that settlements were to be favoured; and that upon this very point they had so been in instances [b] much stronger than the present.

That the settlement of all children upon their father's death followed that of the mother, until they were no longer part of her family; and that an absence, with intent to return and from the necessity of avoiding an infectious disorder, could not have any such legal consequence, as was contended.

1784.

Rex

The Inhabitants of
Long Wittenham.

[a] Fort. 218. Ld. Raym. 1474. Ib. 1473. 2 Str. 746. Burr. Settl. Cas. 49. Ib. 64.
[b] H. 17 G. 3. 1777. R. v. the Inhabitants of Ellisfield, ante 4., and E. 17 G. 3. 1777.
R. v. the Inhabitants of Syderstone cum Bermer. Ib. 19. and M. 27 G. 3. 1786. R. v. the Inhabitants of Skiplam, 1 Durnf. and East 490.

1784.

REX

The Inhabitants of
LONG WIT-
TENHAM.

Lord Mansfield.

The mother, while exercising the right which the law gave her, was a resident upon her own, and irremovable and consequently settled. The *K. v. the Inhabitants of Painswick* is in point.

As to the other child, *Rachael*, she is separated from her parent by the visitation of God; and is this to prevent her settlement? There is nothing in it.

Buller, J. concurring,

Rule absolute and

Both Orders quashed.

Willes and *Ashurst*, Justices, were absent.

Rex v. Inhabitants of Topcroft.

Renting a
tenement of
ten pounds a
year in one
parish does
not, if the
tenant re-
moves with

all his furniture and stock on his farm from that parish into another, give him a capacity of acquiring, during such tenancy, a settlement in such other parish; but if he has been an inhabitant for forty days preceding such removal, in the parish in which his tenement lay, he is there settled.

TWO justices by an order removed *John Warmoll* and *Sarah*, his wife, from the parish of *Topcroft* in the county of *Norfolk* to the parish of *Hempnell* in the same county. The Sessions on appeal quash the order, adjudge the settlement to be in *Topcroft* and state the following case:

That *John Warmoll*, the pauper, rented a certain farm in *Hempnell* at 30*l.* a-year, and entered upon the said farm accordingly on *Lady-day* 1779, and continued there till *Christmas* 1781; when he and his said wife went publickly to, and did reside with, his son-in-law, *Edward Francis*, in the parish of *Topcroft* aforesaid; and that the pauper did send or carry thither all his household furniture and farming stock remaining in his said farm at *Hempnell* aforesaid; and continued to reside with his son-in-law, the said *Edward Francis*, forty days and upwards at *Topcroft* aforesaid, before he the said pauper quitted or delivered up the possession of the said farm in *Hempnell*: but that during such forty days residence in *Topcroft* aforesaid with his said son-in-law, he, the said pauper, did not hire or occupy any land or tenement whatever in *Topcroft* aforesaid; and that he and his wife have not gained any settlement elsewhere.

Settlement in
Hempnell.

Saturday,
Nov. 27th.

Bearcroft shewed cause in support of the order of Sessions; and insisted, that this was a novel attempt: that, under the general and long established principle, he had nothing more to do than to make

make out, that this pauper had continued in this place irremovable for the space of forty days; for that he then by necessary consequence became a settled inhabitant in that place: that this pauper, being tenant of a farm of ten pounds a year, was by law irremovable: that the reason of the law was, that in such a situation he was not likely to become chargeable; and that this fact "that he is likely to become chargeable" is a part of the judgment, and necessarily previous to [a] the adjudication of his settlement, and the order to remove: that his right of acquiring a settlement, depending upon the credit he derives from an ability to take a tenement of the annual value of ten pounds, is not confined to the places wherein the several parts of the tenement or property so taken chance to lie; but extends to every place in which it may be most eligible for him to fix his residence for forty days. Suppose a man to rent fifty or a hundred pounds a year, and that one half of the farm lies ten miles from the other, shall this man, if it is necessary to the convenient occupation of the whole, that he should reside in the midway, though not perhaps in either parish in which this property lies, shall this man be an object of removal? And if he is not, he must acquire a settlement. The doctrine of ability and credit is fully recognized in the case of [b] the *K. v. the Inhabitants of Sandwich*: and a settlement is acquired by a servant, not in the place in which he works, but where [c] he inhabits.

Wilson J. in support of the rule to quash the order of Sessions insisted; that this question depended upon the true construction of the stat. [d] 13 & 14 *Car. 2.* that the words of the statute were, "upon complaint within forty days after any person shall come to settle, in any tenement under the yearly value of ten pounds" it should be lawful to remove, &c.: that neither the words or meaning of the act could possibly be satisfied by such an inhabitancy, as that of the pauper here: that, having run away from his farm at *Hempnell*, his coming to *Topcroft* as an inmate merely could not be considered

1784.

Rex

v.

The Inhabitants of
TOPCROFT.

[a] As a material allegation it must be supported, if impeached; and in the case of the *K. v. the Inhabitants of Carshalton*. E. 15 Geo. 3. 1775. the court, with some indignation at the conduct of the parish, at first directed the case to be sent back to the Sessions to try this fact; but said afterwards, that it would be better to decide the question, as it appeared to be a general one. And this was not an appeal by the party removed, not by the pauper, but by the parish.

[b] Tr. 8 & 9 G. 2. 1735. Burr. Sett. Cas. 44.

[c] Vide the case of the *K. v. the Inhabitants of Hedfor*, Tr. 18 G. 3. 1778. ante p. 51.

[d] C. 12. § 1. Burn tit. Settlement by 10 l. a year.

1784.
 Rex
 v.
 The Inhabi-
 tants of
 TOPCROFT.

in any sense as coming there so to *settle*: that he was at that time in the nature of [a] a vagrant; but that, whatever he was, there were no means of establishing this right but by residence in one of the parishes, in which some part of the tenement lay; and that the court might be convinced, to which side it could with most propriety be imputed, that they were making a novel attempt, he would trace the course of the decisions: that the questions, which first arose after the making of the act, were, whether a settlement was gained, where part of the same tenement lay in one parish and part in another: that in this case the court held [b] *Tr. 3 G.* and [c] *M. 3 G. 2.*, that it was; but, that it would not have been so, had the pauper only rented *several and distinct* tenements in different parishes: that afterwards in *Tr. 8 & 9 G. 2.* the court had relaxed the rule, and adjudged, that, by a reasonable construction, even in the case of separate tenements in different parishes a settlement [d] might be acquired; but that in every of these cases an inhabitancy upon some part of the tenement was expressly stated: that throughout the books there was not a case to be found, in which a settlement had been adjudged to any tenant by virtue of his residence in a parish, in which no part of the lands he rented lay: that Dr. Burn, when he states the case of [e] *Evelin and Rentcomb*, which adjudges a watermill to be a tenement within this act, adds,

[a] In the case of the *K. v. the Inhabitants of Knighton*, *Tr. 27 G. 3. 1787.* (which brought the general question, unintangled with the statement of any particular facts, directly before the court, whether a man, renting a tenement of ten pounds a year in one parish and lodging in another, gained a settlement) Mr. Dayrell who argued in favour of the settlement contended, that the words of the act, as stated above from Dr. Burn, were neither literally and correctly given, or exhibited a proper view of the subject; and that in truth the act applied only to such cases as that, which was at this time before the court; i. e. cases of vagrancy: that the words of the act were "*such persons coming so to settle as aforesaid*;" which by reference to the words of the preamble (which were "that whereas by reason of some defects in the law poor people are not restrained from going from one parish to another and therefore do endeavour to settle themselves in those parishes, where there is the best stock, the largest commons, or wastes to build cottages, and the most woods for them to burn and destroy, and, when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers, &c.") could only apply to persons of this description: and that it was impossible to say that the pauper in the case of Knighton was a stranger or in the situation of a poor vagabond. Vide Pratt. J. in the case of the parishes of South Sydenham and Lamerton, *Tr. 3 G. 1. Str. 58. Fol. 84.* Ld. Hardwicke in *Rex v. Inhabitants of Sundrish*, *Tr. 7 & 8 G. 2. 1734.* Burr. Settl. Cas. *fo. 9 & 10.* and Buller J. in *Rex v. Inhabitants of Fillongley*, *Tr. 27 G. 3. 1787.* post. But the determination was against the settlement in the *K. v. Knighton*, 2 *Durnf. and East. 48.*

[b] *South Sydenham and Lamerton*, *Str. 57. Fol. 81.*

[c] *Elstead and Holliburne*, 2 *Str. 849. 2 Sess. Cas. 159.*

[d] *Rex v. Inhabitants of Sandwich.* Burr. Settl. Cas. 44.

[e] *H. 10 Ann. 2 Salk. 536.*

"that

“that is, if the party lives therein or within the parish” [a]: that it was so far from being true, that the contrary of this doctrine contended for had ever been established, that in the case of [b] the *K. v. the Inhabitants of Kirkby Stephen*, where he had himself taken Mr. *Bearcroft*’s ground of argument, Lord *Mansfield* said, “why will you go into *that* question when you have a clear point (it was an order unappealed against) with you?” And that, in the case of [c] the *K. v. the Inhabitants of Llandverras*, it was admitted by the counsel on that side of the question, and expressly laid down by *Aston J.* “That it is enough if he resides *in the parish*: he need not reside upon any part of the tenement:” and that the case of a servant had not the smallest resemblance to the present: that he went, wherever his master went: that there was nothing of locality annexed to his duty or service, farther than it had reference to the person of his master or his commands; and consequently that the doctrine laid down respecting the relation of master and servant, and contracts between them, could not be applicable to property.

Lord *Mansfield*.

There is in sound construction no colour for saying, that this is a settling and inhabitancy upon ten pounds a year; neither is any authority produced in support of this proposition.

Buller J.

It is taken for granted in all the cases, that the pauper must reside in the parish in which some part of his property lies; and I think it is expressly laid down in the case of [d] *Ryship* and *Harrow*, that the residence must be connected with the occupation.

Willes

1784.

Rex
v.
The Inhabitants of
TOPCROFT.

[a] Burn vol. 3. p. 492. Edit. 1785.

[b] Tr. 10 G. 3. 1770. Burr. Settl. Caf. 664. Bott. 209.

[c] M. 7 G. 3. 1766. Burr. Settl. Caf. fo. 572. and in the case of the *K. v. the Inhabitants of Knighton*, mentioned in another note upon this case, and which was holden not to be a settlement in Knighton, Mr. Gally stated the words of *Aston J.* in the case of the *K. v. the Inhabitants of St. Giles’s in the Fields* from a note of the reporter. H. 15 G. 3. 1775. “The criterion to be sure is the renting ten pounds a year; but then the person renting must reside *in the same parish*. The man, who gained a settlement by renting a windmill, did not lie in it; but he lay in the parish.” This case is reported in Burr. Settl. Caf. 798. and in the windmill case *Probyn J.* expressly so lays it down: “Indeed if the man had not lived *in the parish*, it would not have done.” Tr. 10 & 11 G. 2. 1737. Rex v. *Inhabitants of Butley*, Burr. Settl. Caf. fo. 109.

[d] H. 8 W. 3. The words are “per Holt Ch. J. Having lands in a parish will not make a settlement, but living in a parish where one has lands will gain a settlement without notice.” 2 Salk. 524. This was the case of a *manſion*, in which Dr. Burn gives a similar opinion to that, cited in the case of a *renting*: “but residence upon the same estate is not necessary, provided

1784.

Rex

v.

The Inhabitants of
TOPCROFT.

Willes and Ashburst, Justices, concurring,

Rule absolute and
Order of Sessions quashed.

vided the residence be within the parish." In the case of the K. v the Inhabitants of Sowton, which was a question how far residence upon a man's own estate was necessary, it seems to have been admitted at the bar, that without residence *in the parish* a settlement could not be acquired. H. 12 G. 2. 1738. Burr. Settl. Caf. fol. 127; and, in the same case as reported in 2 Sess. Caf. fo. 214., Lee Ch. J. is represented as saying: "bare residence *without an intent to settle* will not be sufficient; for he might *come* as a guest." And in argument at the bar the law seems to have been taken to be so in the case of the K. v. the Inhabitants of Ozleworth. Tr. 24 & 25 G. 2. 1751. Burr. Settl. Caf. fo. 303.

But Wilmot J. has gone much farther, and has declared his opinion, that even in the case of an estate of one's own and *residence also in the parish* in which such estate lies, the proprietor, *if the estate is not in his own occupation*, becomes an object of removal. Rex v. Inhabitants of Dunchurch. H. 6 G. 3. 1766. Burr. Settl. Caf. fo. 558.

K. v. Inhabitants of Bury.

TWO justices remove *Alice Holt*, late wife of *John Holt*, and her six children from the township of *Bury* in the county palatine of *Lancaster* to the township of *Ratcliffe* in the same county. The Sessions on appeal adjudge the settlement to be in *Bury*, discharge the order and state the following case:

The death
bed declara-
tions of pau-
pers respect-
ing their set-
tlements are
evidence; as
are also, when
they are dead,
their general
declarations.

That the counsel for the respondents stated, that his case depended upon proof, that *John Holt*, late husband and father to the paupers, had served an apprenticeship in the parish of *Ratcliffe* about twenty-seven years ago; and that such apprenticeship would be made out by the following evidence: that in the first place he would prove by the evidence of persons who knew and were well acquainted with the said *John Holt*, that he, the said *John Holt*, lived with one *Nathaniel Greenbalg* of *Spendmoor* in the said parish of *Ratcliffe* for the space of eighteen months about twenty-seven years ago: that the said *Nathaniel Greenbalg* taught the said *John Holt* the art of a fustian weaver: that one *Thomas Meadowcroft*, one of the witnesses so to be called, and who was an apprentice to the said *Nathaniel Greenbalg*, worked in the same loom-house, and slept in the same bed with the said *John Holt* at the said *Nathaniel Greenbalg*'s house at *Spendmoor* aforesaid, during the said eighteen months: that the said *John Holt* and the said last mentioned witness were treated in all respects alike, were taught alike, and worked alike during the said eighteen months: that it would

would appear by the evidence of the widow, *Alice Holt*, that none of her children had obtained a settlement in their own right: that her husband, the said *John Holt*, while on his death-bed and a few days before his death, had told her, that she and her children would belong to and prove their settlement in the parish of *Ratcliffe*; for that he had served an apprenticeship with *Nathaniel Greenbalgh* in that parish: that it would appear by the evidence of the said *Thomas Meadowcroft*, that while the said *John Holt* lived with him as aforesaid in the family of the said *Nathaniel Greenbalgh*, that he heard the said *Nathaniel Greenbalgh*, often say; that the said *John Holt* was his apprentice for three years: that the said *John Holt* told the said *Thomas Meadowcroft*, that his father had paid to his master, *Nathaniel Greenbalgh*, a sum of money to give up the indenture of apprenticeship; and that the said *Thomas Meadowcroft* and his father and mother were invited to the burying of the old wife, meaning the cancelling of the indentures: that it would appear by the evidence of one *Esther Taylor*, that she was intimate and well acquainted with the said *Nathaniel Greenbalgh*'s family, and also with the family of the father of the said *John Holt*; and that the father and mother of the said *John Holt* had told her, that one *Oliver Lomax*, a schoolmaster, had filled up the indenture of apprenticeship between the said *John Holt* and the said *Nathaniel Greenbalgh*: that, while the said *John Holt* was in the service of the said *Nathaniel Greenbalgh*, she, the said *Esther Taylor*, was commissioned by the mother of the said *John Holt* to go to the said *Greenbalgh* and tell him, that his parents wanted to have him home again: that the said *John Holt* afterwards told this witness, that an agreement was made between the said *Greenbalgh* and his parents for his discharge from the said indenture, and that the said indenture was by the consent of all parties burnt; and that she heard the said *Greenbalgh* say "I have done my best to teach him, meaning the said *John Holt*, his trade, and he is a very good weaver:" that she, the said *Esther Taylor*, knew *John Holt* to be in the family of *Greenbalgh* all the time she lived there; and has heard *Holt* say, there was a burying of the old wife: that it would appear also from the testimony of several other witnesses ready to be called, that several declarations of the father and mother of the said *John Holt* and also of the said *John Holt* himself and his master, the said *Greenbalgh*, were made at different times and at various places to the effect aforesaid: that it would

1784.
 Rex
 v.
 The Inhabi-
 tants of
 Bury.

1784.
 Rex
 v.
 The Inhabitants of
 Bury.

would be proved by a witness, that the said *John Holt*, his father and mother, the said *Nathaniel Greenhalgh*, and also the said *Oliver Lomax* were all dead: and that the register of their several and respective burials was ready to be produced and proved; and that all due diligence had been used to find the said indenture, but that it could not be found. The counsel for the respondents also stated, that they had no witnesses to prove the execution of any indenture, or that had ever seen one; or that any indenture ever existed in point of fact, and was lost or destroyed, save but as above stated; but that the whole of the evidence respecting the indenture rested on the declaration and hearsay of persons, who did not pretend to have ever had the indenture in their custody or to have ever seen it. The counsel for the appellants said, they had many witnesses to contradict the facts opened by the respondent's counsel: but the court of Quarter-Session was of opinion, that the above evidence was incompetent and inadmissible; and refused to hear and receive the same.

Saturday,
 Nov. 27th.

Cockell, who had obtained a rule to shew cause why this order of Sessions should not be quashed, now moved, that the case be sent back for the Sessions to state the evidence; and insisted, that, as the facts, stated to have been alleged on the one side, were also stated to have been met by contrary allegations on the other, without either any proof or admission made, it was impossible that this court could pronounce a final judgment, or indeed have any jurisdiction: that the facts opened on the part of the respondents, if duly supported, were decisive in their favour: that it was now become a sort of principle or rule of evidence, in questions of settlement, to admit family declarations both of the place of a husband, parent, or ancestor's settlement, as well as their mode of acquiring it, for the purpose of enabling their descendants to make such derivative claims: that, where the relations were dead, such was the practice of the Quarter Sessions almost universally and throughout the realm; and that the practice had been often recognized by this court: that, if this could not be contradicted, and if declarations, at whatever time made, had been received in evidence, the time and the purpose for which this declaration was made (*i. e.* under the impression of approaching dissolution and to relieve the anxiety of his wife and family as to the place where they were to look for protection and support) were circumstances strongly in favour of their admissibility: that such evidence was always admitted

mitted in criminal cases : that the case of [a] the *K. v. the Inhabitants of St Michael's Bath* was in point : that the circumstances of the present case were throughout much stronger than in that : that not only the declarations of the husband were there made in common conversation ; but that hearsay evidence of the declarations of the master had been received as evidence on the question of settlement, and not marked with any disapprobation by the court : that the husband in that case was not, as in the present, dead, but expressly stated to be living ; and might therefore at a future day come and give a different account : that in that case the indenture was neither produced or inquired after ; nor did either of the examinations taken speak of there ever having existed such an instrument : that Lord *Mansfield* there said, and the whole Court assented to it, that "the presumption from a man's serving four years is [b] that he was bound : " that deeds, charters, and enrolments and other forms and requisites to establish titles and give instruments validity, have after a length of time [c] been presumed ; and that so ought an indenture, where there has been constantly an idea of its existence and an acting by all parties for four years in conformity to such idea. He added, that the cases of [d] the *K. v. the Inhabitants of East Knoyle* and [e] the *K. v. the Inhabitants of St. Helen's in Abingdon* established, that parole evidence might be received of an indenture ; and that, if in the latter case it did not prevail, it was, because that very evidence negated the indispensable requisite of stamping.

Topping in support of the order of Sessions contended ; that, if the whole of the allegations on the part of the respondents uncontradicted were not sufficient to entitle them to the judgment of the court, it would be nugatory to return the case : that, with respect to the authority cited, it decided nothing as to the point of admissibility of evidence ; because the examination of the husband, a soldier, under the mutiny act was there unquestionably evidence : that the rule of evidence or principle, said to obtain in courts of Quarter Sessions, was in direct contradiction to the first principles of the law

1784.
 Rex
 v.
 The Inhabitants of
 Bath.

[a] H. 13 G. 3. 1773. Const. 2. 618.

[b] And after three years service, though the original hiring was only for part of a year, the court has favoured a similar presumption. M. 34 G. 3. 1793. Rex v. the Inhabitants of Long Wharton, 4 Durnf. and East 447.

[c] See the Mayor of Kingston upon Hull v. Horner, Tr. 14 G. 3. 1774. Cowp. 102.

[d] Tr. 13 & 14 G. 2. 1740. Burr. Settl. Caf. 151.

[e] Tr. 22 & 23 G. 2. 1749. Burr. Settl. Caf. 292. and 735.

1784.
 REX
 v.
 The Inhabi-
 tants of
 Bury.

as recognized in other courts; and to say that one court of law could receive a species of evidence, which every other court of law was bound to reject, was a doctrine, that involved a monstrous and disgraceful contradiction, would remove landmarks, and be productive of the utmost confusion: and that the court had here demonstration; that a mischievous practice, which under a few precedents was said to be growing general, was not become universal.

Lord Mansfield.

Whether in point of fact an indenture ever existed, is the very question in the cause: it is the whole matter in dispute: and many circumstances are shewn, from whence an apprenticeship (which could not be without an indenture) may very reasonably be implied. Declarations of parties to relations are in settlement cases admitted as evidence from necessity; a necessity, which grows out of the very nature of the subject: and the practice, in conformity to this rule, has become so very general, that it ought not to be departed from, until very good reasons [a] can be assigned against it. The Sessions have done wrong in refusing to hear the evidence. The declarations of the husband also, with many other incidents, raise a strong presumption. It must be sent back for the evidence to be heard and a conclusion drawn.

Buller J.

No argument has been urged against receiving the declaration of the husband on his death bed. From the awful situation in which the party then speaks, such testimony is uniformly received in criminal cases; and is consequently admissible here. And there is also other evidence, which has always in these cases been received.

Willes and Ashburst, Justices, concurring,
 Case sent back to the Sessions to be heard.
 It never was returned.

[a] For the present state of this question see the case of the K. v. the Inhabitants of Eriswell, Tr. 30 G. 3. 1790. 3 Durnf. and East 707.

Hilary Term

25 Geo. 3. 1785.

Rex v. Inhabitants of Stretton.

TWO justices by an order remove *William Coates, Grace* his wife, and their two infant children from the parish of *Dalbury* in the county of *Derby* to the parish of *Stretton* in the county of *Stafford*.—The Sessions on appeal confirm the order, and state the following case :

That the pauper's father came into the parish of *Tutbury* several years before the pauper's birth under a certificate from *Stretton* : that about the age of thirteen the pauper was hired by his father to *Mrs. Harris* of *Fauld Hall* in the parish of *Handbury* for fifty-one weeks, which he served ; then to *Hannab Eyre* of *Overseal* in the county of *Leicester* for fifty-one weeks, which he served ; then to *Mr. Brown* of *Castle Heys* in the said parish of *Tutbury* for another fifty-one weeks, which he also served : that at the expiration thereof the pauper made some sort of an agreement, without the knowledge of his said father, to serve the said *Brown* for another fifty-one weeks ; but the pauper's father, being informed thereof, applied to the said *Brown*, and said his son should not serve him, unless he would consent to raise his wages : that *Mr. Brown* thereupon consented to give him five shillings a year more, and to allow the pauper's father half a strike of wheat for the pauper's washing, and then paid the father the earnest money ; and the pauper continued in his service all the said last-mentioned fifty-one weeks, except only about a fortnight or three weeks ; during

An infant, whose father forms for him such contracts of hiring and service as do not give a settlement, is not, if he performs them, thereby emancipated.

1785.
 ~~~~~  
 REX  
 v.  
 The Inhabi-  
 tants of  
 STRATTON.

Settlement at  
 Dalbury.

Saturday,  
 Jan. 29th.

which time the pauper, being ill, went to his father's house, and, when recovered, immediately returned into the said *Brown's* service: that afterwards he was hired by his father to *Joseph Mould* of *Clifton* for fifty-one weeks, but served him only one month: that the pauper was first hired to the said *Brown* at *Michaelmas* 1780; and his father at *Lady-day* 1781 took lands of the value of 10*l.* *per annum* and upwards, which he rented one year, and during all that time continued to reside in the said parish of *Tutbury*: that the father received all the pauper's wages (except only such part thereof as the pauper himself had received of his said master for pocket money) and found him cloaths therewith; and, during the time that the pauper continued in the service of *Brown*, he was washed at his father's house: that the pauper is now about nineteen years of age, and never lived with his father after the time of his first hiring to *Mrs. Harris*, save as aforesaid.

*Balguy* shewed cause in support of these orders; and insisted, that, by the successive contracts of hiring and service made by the father for the son, the father had waived his authority over him as a parent: that the son was not at such times under his controul, but under his master's: that in case of his absconding or receiving any personal injury, which might prevent his service, the remedies were to be had and enforced by the master only: that he knew of no rights that the father then had, except that if the son had been the owner of lands, the father would have been guardian in socage; and by an act of the Legislature the consent of the father was made necessary to his marriage: but that one of these rights regarded his property; and the other would subsist, whether the son was part of his father's family or not. He cited the case of [a] the *K. v. the Inhabitants of Walpole St. Peter's*, which was that of an infant enlisted as a soldier: and contended, that, as the mode of service could make no difference, that case must govern the present: that as to the case of [b] the *K. the Inhabitants of Halifax*, it did not apply; for there it was clear upon the facts, that the son had *no other* home but his father's house at the time the father's last settlement was acquired, and therefore, having no other place where he had a right to reside, he was by necessary construction considered as part of his father's family; but that here the father

[a] E. 9 G. 3. 1769. Burr. Sess. C. 638. 1 Black. Rep. 669.

[b] E. 15 G. 3. 1775. Burr. Sess. C. 806.



could not take or detain him, unless by his master's consent, without being liable to an action.

*Bearcroft, Coke and Caldecott contra* were stopped by the court.  
Lord Mansfield.

This is in the nature of a lending by the father.  
Buller, J.

In the case cited of the *K. v. the Inhabitants of Walpole St. Peter's* the son hired himself. What then is the meaning of the word Emancipation? It can be only, where the party becomes *sui juris*; and it must be a setting at liberty by the act of both parent and child, or at least of one. But here the contract was the act of the father in every instance; for, in the only instance in which the son made a contract for himself, the father interposed and rescinded it. He who does nothing, or is not permitted to do any thing, on his own account, cannot be emancipated. Had he acted for himself, perhaps he might [a] then have been a freeman.

*Willes and Ashburst*, Justices, concurring,

Rule absolute and  
both Orders quashed:

1785.  
REX  
v.  
The Inhabitants of  
STRETTON.

[a] But in the case cited of the *K. v. the Inhabitants of Hallifax* the son at fifteen years of age, without the concurrence or privity of his father, by his own act bound himself apprentice for four years; and yet this circumstance was not even pressed in argument, as a ground of emancipation: and see the case of the *K. v. the Inhabitants of Tottington Lower End*, E. 23 G. 3. 1783. ante 284. Yet where a daughter, who had never acquired a settlement and lived as part of her father's family, became an adult, and "went to a farmer's in the same parish as a wet-nurse for eight weeks," though she afterwards returned to her father's family, as she had by this act placed herself *jure sub alieno*, the Court held her to have been emancipated. *R. v. the Inhabitants of Roach*, E. 35 G. 3. 1795. 6 Durnf. & East 247.

### Rex v. Inhabitants of Ellslack.

TWO justices remove *Hannab Driver*, single woman, from the township of *Wadsworth* in the West Riding of the county of *York* to the township of *Ellslack* in the same Riding. The Sessions on appeal confirm the order, and state the following case:

year, if accompanied with a reservation of wages weekly, will not be considered as a hiring for a year.

That the pauper, *Hannab Driver*, was hired to *John Smith* and *Isaac Smith* of *Wadsworth*, two brothers, who kept house and lived

A mere indefinite hiring, without any mention whatsoever of time, which is otherwise a hiring for a year.

1785.

REX  
v.

The Inhabi-  
tants of  
ELSLACK.

Settlement at  
Elsack.

Saturday,  
Jan. 29th.

lived together: that she was the only female servant in the house, and did all the menial and household business: that no mention was made about being hired for a year: that she hired herself to them at the wages of one shilling and fourpence the week and board and lodging, *for as long a time as they should want a servant*: that when she had served seven weeks she was paid her wages, and afterwards, when she had served two or three months: and she was paid again, as she wanted them; and continued to live a year and five months in the service of the said *John and Isaac Smith*, and declared she did not think herself loose every week nor every month.

*Bearcroft* shewed cause in support of these orders; and insisted, that, as no mention was made in the contract of any retainer for a year, the reservation of the wages must supply this deficiency, and explain for the parties what their intentions were, as to the duration of the contract: and that as this was expressly for a week only, opinion or conjecture ought not to extend it further.

*Lee and Cockell* in support of the rule insisted; that no principle upon this branch of the law was more clearly established as well as universally received, than that the duration of the service is the point to be adverted to, and not the period of the reservation of wages: that it was established, that an indefinite hiring was a hiring for a year: that this, which was for *as long a time as the master should want a servant*, was as indefinite as language could make it: that this contract was stronger in its terms and more permanent in its nature than that in the case of [a] the *K. v. the Inhabitants of Stockbridge*: that there it was insisted at the bar, that a contract at will is a contract for a year, till the will is determined: that the settlement was in that case supported, and its principle recognized in the case of [b] the *K. v. the Inhabitants of Bath Easton*: that in the case of [c] the *K. v. the Inhabitants of Dedham*, which otherwise might have afforded some argument on the other side, the servant under the original agreement, which continued unvaried throughout the whole service, compelled his master to raise his weekly wages under the threat of leaving him in the middle of a year: that thereby the nature of the contract was ascertained, and it was proved by the conduct of him, who would have derived the benefit of a settlement from its continuance, that its duration was not meant to extend to the end of the year: and that the period at

[a] M. 14 G. 3. 1773. Burr. Sess. C. 759.

[b] H. 16 G. 3. 1776. Burr. Sess. C. 823.

[c] M. 10 G. 3. 1769. Burr. Sess. C. 653.

which

which it might be convenient to the servant to make her wages payable, though it might demonstrate the urgency of her wants, did not by any means determine the point of time, at which her obligation to serve would cease.

Lord Mansfield.

It is settled, that where there is a general hiring without limitation of time, it shall be *presumed* to be for a year. But this like all other presumptions, can only stand, till something positive appears to the contrary. Does then the presumption here from the circumstances appear to have been taken away; *i. e.* does the contract amount to shew, that by the agreement of the parties it was to hold for less than a year? It plainly appears, that it was so. The wages were to be paid weekly: there was nothing to prevent the master from turning her off at the end of any week; but he could not do so in the middle of a week. This is the only restriction: had the year closed in the middle of a week, he would not have been intitled to dismiss her.

Willes, Ashburst and Buller, Justices, concurring,

Rule discharged and  
Both orders affirmed.

See the case of the *K. v. the Inhabitants of Seaton and Beer, E.* 24 G. 3. 1784. *ante p.* 440: but the case of the *King v. the Inhabitants of Long Wharton, M.* 34 G. 3. 1793, referred to in the notes *ante p.* 443, seems to have done away this distinction, and of course to have made the further consideration of this class of cases unnecessary.

### Rex v. Inhabitants of Highnam.

TWO justices by an order remove *Edward Reading, Ann* his wife and their child, from the parish of Saint *Aldate* in the city of *Glocester* to the hamlet of *Highbnam* in the county of *Glocester*. The Sessions on appeal confirm the order, and state the following case:

the nature of an apprenticeship, or of a hiring and service. They are not convertible. Though a written agreement does not operate to retain as an apprentice, yet if the contract was entered into with that view, and is a fraud upon the revenue, it will not be convertible into a hiring and service, and in that respect intitle to a settlement.

That the pauper, *Edward Reading*, was born in the hamlet of *Highbnam* the place of his father's last legal settlement; and that, when the pauper was seventeen years of age, he went to  
*William*

1785.

Rex

v.

The Inhabitants of  
ELSLACK.

The intention of the parties at the time must decide, whether a contract be in

1785.  
 REX  
 v.  
 The Inhabi-  
 tants of  
 HIGHNAM.

*William Evans* of the parish of *Saint Mary de Crypt* in the city of *Glocester*, carpenter, for the purpose of being his apprentice for the term of four years, in order to learn the trade of a carpenter; but to save the expences of the indentures and duty (four guineas consideration being paid by the pauper to his master) he and his master agreed to sign an agreement upon unstampt paper, which was accordingly done in the following words, viz. "Articles of agreement made and concluded upon this thirteenth day of *July* 1772, between *William Evans* of the city of *Glocester*, carpenter, and *Edward Reading* of *Highnam* in the said county of *Glocester*, in consideration of the weekly wages or sums of money and covenant herein after mentioned, and which on the part of the said *William Evans* are herein after agreed to be paid done and performed, the said *Edward Reading* doth hereby covenant promise and agree to and with the said *William Evans* in manner following, that is to say; he the said *Edward Reading* shall and will faithfully serve the said *William Evans* in the business or trade of a carpenter from the day of the date of these presents unto the full end and term of four years from thenceforth next ensuing and fully to be compleat and ended. The consideration of this agreement is, that I *William Evans* do pay to *Edward Reading* for every weeks work he do work four shillings and six pence per week for the first year from the date hereof; for the second year five shillings per week; for the third and fourth year six shillings per week." "*William Evans, Edward Reading*. Signed and delivered in the presence of us, *J. H. J. R. and A. R.* 1772. *September 19th*. Mr. *Edward Reading* dr. to *William Evans* the sum of four pounds four shillings. Witness my hand, *Edward Reading*."

That it appeared by the parole evidence of the said *Edward Reading*, that at the time of signing the above agreement, it was further agreed by parole between the pauper and the said *William Evans*, that the pauper should find his own diet and lodging and that he was to be his own master on *Sundays*, and was not to be paid for the time he should play; but was to be paid a proportionable part only of the weekly sums before mentioned for the time as he should work: that the pauper played when he pleased, and was out of his master's service altogether at least a fortnight or three weeks in every year, besides *Sundays*; and at the end of every week his master deducted out of the weekly sums before-mentioned for the time he had absented himself from work; and that he had every  
*Sunday*

*Sunday* to himself: that he went to his father's at *Highbam* every *Saturday* evening, and did not return to his master's house until the *Monday* mornings, and sometimes not until the *Tuesday* mornings; and that he served the four years in the manner before-mentioned.

*Bearcroft* and *Glyfford* shewed cause in support of these orders: and insisted, that the contract was clearly with an aim to an apprenticeship; and that apprenticeship and service were not convertible: that it was not under an [a] indenture; and, that if it were, this instrument could not have the effect of an indenture of apprenticeship; for it was not stamped under the general stamp acts on this subject, neither was the additional duty of 6 *d.* in the pound paid, or the additional stamp had [b] for the four guineas stated to have been given to the master: that this was also stated not to be an indenture, and the reason for not executing such an instrument was also given; that expence might be avoided: that it was equally clear, that it could not be such a hiring and service for a year as would give a settlement; as the express exception of *Sundays*, unprotected by any custom of trade, and a general liberty of absenting himself when he pleased, was made part of the contract itself: and that the true principle was laid down in the case of [c] the *K. v. the Inhabitants of Whitchurch Canonorum*; and was, that the Court would try these titles to a settlement by the nature of the agreement, which appeared to be in contemplation at the time of making it; and by this intention only.

The Court calling upon the other side, *Wilson, J.* and *Fendall* in support of the rule contended; that a settlement was gained by the hiring and service for four years: that, had there been no introduction to the agreement, this would have clearly been so. The question therefore was, was this the intention of the parties? For that the law was, according to the case cited, that such intention must govern: that here there was a service under a contract

1785.  
 Rex  
 v.  
 The Inhabitants of  
 Highbam.  
 Settlement at  
 Highbam.  
*Saturday,*  
*Feb. 5th.*

[a] It is evident from the preamble of st. 31 G. 2. c. 11., that it was the intention of the Legislature that a binding in the form of an indenture should not be necessary to give a settlement upon an apprenticeship; and the act is stated by Dr. Burn. tit. Apprentices, vol. 1. p. 62. Edit. 1793, to be expressly so: but the enacting part comprehends only one of the two things, that from the preamble appear to have been in contemplation; and only declares, that "such person shall not be liable to be removed:" a situation, that does not necessarily give a settlement upon forty days residence.

[b] St. 8 Ann. c. 9. § 32, & 36. 9 Ann. c. 21. § 7. E. 4 G. 2. 2 Str. 903.

[c] Tr. 5 G. 3. 1765. Burr. Settl. Cas. 540.

1785.

Rex

The Inhabitants of  
HIGNAM.

and a hiring as a servant: that here was no agreement for an indenture, as in the case cited, to make the pauper an apprentice, nothing void, as being defective in point of form; but a contract creating and intending to create the relation of master and servant. But it is said, that the pauper went originally to his master for the purpose of being apprenticed: taking it to be so, this purpose might legally be changed, and actually was changed; and this step was taken on account of the party's poverty and to save expence: but that no such thing appears on the face of the agreement: that there no exception, no absence *ad libitum* or on *Sundays*, is to be found: that all this is proved by parol in direct contradiction to the written agreement, and ought not therefore to have been received: but that, if it ought, in the circumstance of liberty of absence, this case resembled that of [a] the *K. v. the Inhabitants of King's Norton*, which was a hiring for a year of a servant, who was to be paid according to the work done: and that was nevertheless holden a settlement.

Lord *Mansfield*.

Nothing is so manifest, as that this is a fraud on the revenue. The relation intended was that of an apprentice: and this was to be so accomplished as to evade the duty.

*Ashburß, J.*

There can be no doubt of the character, in which the pauper was to stand. He gives four guineas to his master; and servants do not make their masters a consideration.

*Buller, J.*

The view of the case, supposed by Mr. *Wilson*, that it was a change of intention, is not open to him. It was on the contrary one transaction: first an agreement to become an apprentice and that not abandoned; but a device is thought of, by which they may avoid the expence of the known duties to government: and then all the advantage is with the master, who by this expedient is to defraud the public.

*Willes, J.* concurring,

Rule discharged and  
Both Orders affirmed.

But in the case of the *K. v. the Inhabitants of Little Bolton*, the Court had holden, that, under an agreement for a year to teach

[a] Tr. 13 & 14 G. 2. 1740. Burr. Settl. Cal. 152. 2 Str. 1139.

a trade,

a trade, the pauper being to find himself in necessaries and the master to have half his earnings, if he is not retained *eo nomine as an apprentice*, a settlement may be gained. *M. 24 G. 3. 1783. Ante 367.* In a case, however, subsequent to the present, but which did not finally receive the judgment of the court on this point, that of the *K. v. the Inhabitants of Edgworth, H. 29 G. 3. 1789*, Lord *Kenyon* seemed to question the authority of the above decision. The state of this case, and the subsequent proceedings upon it are given in *2 Durnf. & East 353. T. 29 G. 3. 1789.*

1785.

REX

v.


The Inhabitants of  
HIGGNAM.

## Rex v. Inhabitants of North Cray.

TWO justices by an order remove *George Golding, Elizabeth*, his wife, and their four children from the parish of *Kingsdown* in the county of *Kent* to the parish of *North Cray* in the same county. The Sessions on appeal confirm the order and state the following case:

That the pauper, *George Golding*, about seventeen or eighteen years since, being a single man, hired himself as a servant a few days before *Old Michaelmas-day*, from that *Michaelmas-day* for one year at the wages of six pounds ten shillings to *James Bedell* of *Ruxley* in the parish of *North Cray*: that the pauper went to his said master the said *Michaelmas-day*; and continued with him in the said parish of *North Cray*, until eight or nine days before *Michaelmas-day* following: when, in consequence of being charged on oath with being the father of a bastard child, likely to be born in and to become chargeable to *North Cray*, he was apprehended by a warrant of a justice of the peace; and, not giving security to indemnify the parish, or entering into a recognizance to appear at the next general Quarter Sessions, he was duly committed to *Dartford Bridewell*, his master, *James Bedell*, then being one of the churchwardens of *North Cray*, and one of the persons that apprehended him, and went with him to the *Bridewell*: that the pauper continued in prison until the eleventh of *October*; and on that day he executed a bond to indemnify the parish of *North Cray* against the expences, which the child might occasion to them, if born in their parish; and on the same day the said *James Bedell*, his master, with the other officers went to the *Bridewell* to discharge the pauper; and the said *James Bedell* then paid the pauper his wages

If, by the servant's default, he does not serve the whole year, he gains no settlement; whether the discharge or absence be immediately before the expiration of the year or at a more distant period.

1785.  agreed for, except four shillings, which he deducted contrary to the consent of the pauper for the time he had been in confinement: the pauper did not recollect whether he gave any receipt for the wages; but a receipt was produced and given in evidence, to which the pauper had set his mark. (It was herein set out at length: it bore date on the eleventh of *October*, and was given for the sum of six pounds six shillings and three half-pennys, in full for wages from the 10th of *October* 1765 to the 29th of *September* 1766.)

REX  
v.  
The Inhabitants of  
NORTH  
CRAY.

That the parish officers consented to his release on the 11th of *October*; but the keeper of the Bridewell refused to discharge him without a proper authority: and on the twelfth he was discharged by an order which was set out in the case, made by the magistrate who had committed him; and which recited, that the commitment for refusing to give security, and the discharge upon having given it, were both at the instance of the overseer of *North Cray*.

Settlement at  
*Kingsdown*.  
Saturday,  
Feb. 5th.

*Lee, Robinson* and *Harvey* shewed cause in support of these orders; and contended, that here the servant continued throughout his year in that character, and therefore gained a settlement; though had he gone away before the expiration of his term, it would have been otherwise: that all the cases, which under circumstances of this sort decide, that a settlement was not gained, go upon this idea, that the contract between the parties was dissolved before the end of the year; but that here it was not so: that in argument it could at most be said to be suspended; but that in the opinion of both master and servant, it subsisted to the end of the year: that, had it not been so, the master would have paid him his wages at the time, and not have deferred it for three weeks and till his year was near expiring, for the purpose, by an after-thought, of defeating his settlement: that this therefore was a species of fraud in the master; and that in the case of [a] the *K. v. the Inhabitants of Westmeon*, the ground of the judgment of the court was, that the contract was dissolved.

*Buller, J.*

There must be either an actual or implied service. Here is no actual service. From whence is the Court to imply one?

*Harvey*. From the whole of the master's conduct, no part of which was marked with any thing like dissatisfaction at his absence, but the contrary; inasmuch, as by not paying the pauper his

[a] *M. 22 G. 3. 1781. Ante 129.*



wages at the time he apprehended him, it must be implied, that he had consented to his continuing in the character of a servant, and considered him as intitled to return, if discharged from Bridewell, before the end of his service: that there is nothing in the case but the bare act, to shew that he meant the apprehending of the servant under the warrant as a discharge from his service; and this act he was bound, as a public officer, to do: and they cited the case of [a] the *K. v. the Inhabitants of Frome Selwood*, where the master gave the servant leave to absent himself for the last ten days of his term for the purpose of avoiding his settlement: and yet the court, though he did so absent himself, supported the settlement.

Lord Mansfield.

The single question is, whether the pauper served his year? In fact, he certainly did not. Did he then *constructively*? There is not a pretence that the master consented to dispense with the time, which the pauper did not serve: there is not a colour of fraud in the master's conduct. The servant's absence was the consequence of his criminality. His imprisonment was not illegal. No doubt.

*Willes, Ashburst, and Buller*, Justices, concurring,

Rule absolute and

Both Orders quashed.

See the case of the *K. v. the Inhabitants of East Kennet*. *M.* 26 G. 3. 1785. *post*.

[a] Tr. 6 G. 3. 1766. Burr. Set. Caf. 565.

Rex v. Inhabitants of Towcester.

TWO justices by an order, dated the 31st day of *March* 1784, remove *Mary Crofs* and her four children from the parish of *Towcester* in the county of *Northampton* to the parish of *Harlestone* in the same county, as to the place of *her* last legal settlement. By another order, dated the 27th day of *May* 1784, two other justices remove *Richard Crofs*, from the said parish of *Harlestone* to the said parish of *Towcester*. The Sessions on appeal confirm the last order and state the following case:

removal, is conclusive upon the settlement of the husband.

That

1785.

REX

v.

The Inhabitants of  
NORTH  
CRAY.

The removal of a woman to the place of her settlement, if in point of fact she is a wife, though such addition is not given to her in the order of re-

1785.

**Rex**  
v.

The Inha-  
bitants of  
Towcester.

Settlement at  
Harlestone.  
Saturday,  
Feb. 5th.

That on the 17th day of *September* 1773 *Richard Crofs* and *Mary* his wife, *John* their son, aged twelve, *Mary*, aged eight years, *Sarah*, aged six years, and *James*, their son, aged about three years, being inhabitants legally settled at *Harlestone*, were duly certificated to the parish of *Towcester*: that they removed to *Towcester*, and resided under the said certificate; and during such residence *Richard Crofs*, the husband, gained a settlement by renting ten pounds *per annum*. Afterwards, in the absence of the above *Richard Crofs*, the said *Mary Crofs* and four of her children, not mentioned in the said certificate but born under it, having become chargeable to *Towcester*, were removed from *Towcester* to *Harlestone*, as by order hereunto annexed; and which order was not appealed from. Afterwards the said *Richard Crofs*, the husband, coming to his family at *Harlestone*, was removed from *Harlestone* to *Towcester*, as appears by the second order above recited.

*Dayrell* had moved for this rule on the authority of the case of [a] the *K. v. the Inhabitants of Hinxworth*; and, no cause being shewn, it was now made

Absolute and both  
Orders were quashed.

[a] H. 18 G. 3. Ante 42. And see the *K. v. the Inhabitants of Leigh*. M. 19 G. 3. 1778. Ante 59. and the *K. v. the Inhabitants of Ealing* in last term. Ante 472.

The question here was, whether the Sessions, who were of opinion that the husband's true settlement was in a different parish from that to which his wife had in his absence been removed as to the place of her settlement by an order unappealed from, were concluded by such first order, when that order gave no other description of her than her name, without her addition of wife of *Richard Crofs*.

### Rex v. Inhabitants of Broadhembury.

An infant,  
sent by her  
father into  
the parish  
workhouse,  
in conse-  
quence of his  
inability to  
maintain her,

**T**WO justices by an order remove *Ann Turpin*, single woman, from the parish of *Broadhembury* in the county of *Devon* to the parish of *Ottery Saint Mary* in the same county. The Sessions on appeal adjudge the settlement to be in *Broadhembury*, quash the order and state the following case:

and continuing there after she becomes adult, is not thereby emancipated.

That the pauper's father, *Richard Turpin*, gained a settlement by renting an estate of seventy pounds *per annum* in the parish of *Broadhembury*, during which time the pauper resided with her father there:

there: that the father, being reduced in circumstances, was obliged to give up the said farm; before which time the pauper, when of the age of ten years, had the misfortune to be rendered incapable of work by her hands being burnt off: that the pauper's father, after quitting the said farm, continued to live in *Broadbembury* parish for about two years in a small cottage; and, being unable to maintain the pauper, he procured her to be maintained by that parish; and she was accordingly placed in the work-house, being then twenty years of age; where she remained till the order of removal, never having again returned to her father: that in the beginning of 1783 the pauper's father left *Broadbembury* and went into the parish of *Ottery St. Mary*, and took an estate of twenty three pounds *per annum*, and resided thereon till *Lady-day* 1784; when he took another estate of twenty pounds a year in the same parish, and still occupies both: and hath resided there since *Lady-day* 1783.

1785.  
 ~~~~~  
 REX
 v.
 The Inhabitants of
 BROADBEMBURY.

Bearcroft and *Clapp* shewed cause in support of these orders; and contended, that the father having yielded all his dominion over the pauper when she was ten years of age, having thrown her upon the parish in consequence of his inability to support her, the parish having taken her, and she having continued long after she had attained her full age, under their protection, it was impossible to state a more compleat emancipation; there being on one hand an abandonment, and that with the child's consent, and on the other a reception and adoption.

Saturday,
 Feb. 5th.

Lord Mansfield.

The only question is upon the fact of the parish having kept her in the work-house; and how is that an emancipation? He has not thrown her upon the parish: there is nothing voluntary in what he has done. He was very poor and he permitted it.

Clapp. The true legal meaning of the word Emancipation is the being no longer subject to the parental authority and controul. To effect this, there must, as was said by *Buller J.* in the case of the *K. v. the Inhabitants of Stretton* a few days ago, be some act of the parent and child; or of one of them at least; and then the child may be free. [a] In this case there has been enough done by one or other of them to bring it within this distinction: and nothing can more unequivocally prove that the child was in this state, than

[a] Ante p. 487.

1785.
 REX
 v.
 The Inhabi-
 tants of
 BROADHEM-
 SURY.

her separation from her father by his procurement, without any probability of her return.

Rooke Serjt. and *Fanshawe*, in support of the rule to quash the order of Sessions, were stopped by the Court.

Lord Mansfield.

There is no colour for the argument. She is not even in service. It is true, she is supported in the workhouse: but the father has done nothing more towards emancipating her than suffering her to accept from the parish a support, which his poverty would not enable him to give. He has permitted public charity to relieve him from the burthen of one of his duties, and has for this purpose put the parish in his stead; but has not thereby varied the relation which the child bore to her father's family.

Willes and *Ashurst*, Justices, concurring,

Rule absolute and
 Orders of Session quashed.

Buller, J., who paid to the rates of one of the contending parishes, declined giving any opinion.

Rex v. Inhabitants of Birdham.



Obtaining a
 second certi-
 ficate seems
 to be a dis-
 charge of a
 former.

The certifi-
 cate of a minor, included in that of his father, is under circumstances avoided by a removal of his father, stating the true number of his children; though the minor be not actually sent under the order and the removal is from a third parish, and not the parish certificated to.

TWO justices by an order remove *George Earwicker* and *Hannab*, his wife, from the parish of *Birdham* in the county of *Sussex* to the parish of *Walberton* in the same county. The Sessions on appeal adjudge the settlement to be in *Birdham*, quash the order and state the following case:

That *John Earwicker*, the father of the pauper, *George Earwicker*, about thirty years ago went by certificate from the parish of *Birdham* to the parish of *Walberton*: that under this certificate the said *George Earwicker*, the pauper was born in the said parish of *Walberton*: that, after the said *John Earwicker*, the father of the pauper, had resided about three or four years in the said parish of *Walberton*, he voluntarily removed from thence with his family to the parish of *Arundel*, where (under a fresh certificate from the said parish of *Birdham*) he resided about

five

five years: that the said *John Earwicker*, the father of the pauper, voluntarily removed from thence with his family to the parish of Saint *Andrew* in the city of *Chichester*, where (under a fresh certificate from the said parish of *Birdham*) he resided about ten years: that the said *John Earwicker*, the father of the pauper, then voluntarily removed from thence with his family to the parish of *All Saints*, otherwise the *Pallant*, in the same city, and there lived about six months under another certificate from the said parish of *Birdham*; when, falling into distress and applying for relief from the parish of *All Saints*, otherwise the *Pallant*, the said *John Earwicker*, the father of the pauper, was relieved by them; and thereupon the said parish officers obtained an order from two of his majesty's justices of the peace for the said city of *Chichester*, by which it was ordered that the said *John Earwicker*, the father, his wife and five children, *should be removed* from the said parish of *All Saints* to the said parish of *Birdham* (the said *John Earwicker*, the father, then having only five children). But the said *George Earwicker*, the pauper, being employed by one *Mitten* to look after horses as a stable-boy in the parish of Saint *Andrew* aforesaid (an adjoining parish to the said parish of *All Saints*) he was not removed with his father, but in about two or three days afterwards went to the said father in the said parish of *Birdham*, and there lived with him about six months, as part of his said father's family; and then, being sixteen [a] years of age, put himself apprentice by indentures legally executed and stamped to one *Edward Noyce*, of the said parish of *Walberton*, cordwainer, for three years; the greater part of which time, and particularly the two last months thereof, he served with his said master in the said parish of *Walberton*.

Mingay shewed cause in support of this order; and stated the question to be, whether the certificate was *functus officio*; or had been so deserted, as to restore to the pauper his capacity of acquiring a settlement by apprenticeship in the parish, to which his father had thirty years before been certificated? He contended, that the original certificate was in force with respect to the whole family: that it never had been decided, but that fifty certificates might be in force at the same time: that there was no sound reason, why the granting of one certificate should be construed to be a superseding of another: that it was no more than an acknowledgment of the place, where the pauper was legally settled; and to

1785.

REX

The Inhabitants of BIRDHAM.

Settlement in Walberton. Saturday, Feb. 5th.

[a] If he was born at Walberton and was no older, and his father went, as is stated above, thirty years ago to Walberton, his father must have resided there 13 or 14 years at the time of his birth, and not 3 or 4 only, as is stated above.

1785.
 Rex
 v.
 The Inhabi-
 tants of
 BIRDHAM.

multiply the number of them might be a great accommodation to a poor family: that obtaining a new certificate had not under any authority been considered as a desertion of the old one: and that, if this was so, it brought the case singly to the question of length of time: that in the case of [a] the *King v. the Inhabitants of Taunton Saint Mary Magdalen*, though the distance of time was nearly double to that which occurred in the present instance, the Court expressly declined going upon any particular ground; but went upon the circumstances of the case taken altogether: that as to the removal of the family, that circumstance could not affect this boy, who was not personally removed: that to be sure, if he had, this case would have come within the principle of that of [b] the *K. v. the Inhabitants of Sudbury*; that a certificate is discharged by a removal: but that the law was understood to be settled in conformity to the opinion intimated by *Aston J.* in the case of [c] the *King v. the Inhabitants of Framlingham*; that if several persons reside under the same certificate, the asking of relief by one only would not render the rest removeable: that consequently the certificate could not be avoided, except as to those who were removed: and that this boy, so far from having become chargeable, or having even constructively, as being under his father's roof, asked relief, was supporting himself at the time by his labour in another parish.

Bearcroft, Hurst and Steele, in support of the rule to quash this order, insisted; that the pauper's father, having obtained three new certificates since the original one, having under the protection of those certificates three times changed his place of residence, and having never, during the course of twenty seven years, shewn the least disposition to return and live under that original certificate, must in point of law be considered [d] as having abandoned it; and consequently that his son, the pauper, acquired a settlement by his apprenticeship: that a new certificate is a discharge of the old, though it may not have been expressly so adjudged; and that the Court will not, by the mischievous construction contended for, discourage the granting of any certificates contrary to the po-

[a] Tr. 29 & 30 G. 2. 1756. Burr. Settl. Caf. 402.

[b] H. 28 G. 2. 1755. Burr. Settl. Caf. 373.

[c] Tr. 13 G. 3. 1773. Burr. Settl. Caf. 748.

[d] And this has been since adjudged in the case of the *K. v. the Inhabitants of Newington*, Tr. 26 G. 3. 1786. 1 Durnf. and East 354.

licy of the act: that, besides these several voluntary removals in point of fact which amount to an abandonment by the party himself, there has been a compulsory one by a magistrate, which is a discharge of the certificate by operation of law: that the case cited is admitted to have generally so laid it down; and that, if it is so generally, the circumstance of this removal having been made from a third parish and not the parish certificated to, cannot in principle constitute a difference: that where under a general certificate a father goes into any parish, and, under a general removal of him and his family without names particularly specified, is sent back again, as it is in contemplation of law only, and not nomination, that the children are included in the certificate, so ought they by the same intendment to be also included in the removal: and consequently that the same act that discharges the certificate of the father, must at the same time put an end to that of the whole family, or at least to that of the wife and such children, as like this are minors: that the order of removal in this case states in terms five children; and that inclusive of the pauper, the father had no more than five: that the conduct of the pauper amounted to a clear unequivocal act of abandonment and desertion of the certificate on his own part, after it had been indisputably discharged as far as respected his father and family by the removal; for that his own voluntary act might be as conclusive upon the fact of his having *abandoned* his certificate, as the compulsory process of the law could be upon its being *discharged*: that his voluntary removal to *Birdham* three days after his father's removal under an order there, where he had never before been and to which place he could have no relation but as part of his father's family, was a plain indication of his intent; and that his accidental return to *Walberton* six months afterwards ought not to be considered as a returning by virtue of any right he might claim under the discharged certificate of his father; for returning as an apprentice he did not want any such protection: and therefore that he gained a settlement.

Lord Mansfield.

I think the original certificate thirty years ago was discharged [a] by the following certificate: but if that is doubt-

1785.

REX

v.
The Inhabitants of
BIRDHAM.

[a] And it has been since so adjudged in the case of the K. v. the Inhabitants of St. Peter in Denby. E. 26 Gr. 3. 1. Dur. f. and East 218.

1785.
 Rex
 v.
 The Inhabi-
 tants of
 BIRDHAM.

ful, I am clearly of opinion, that it was discharged by the order of removal.

Willes, Ashurst, and Buller Justices, concurring,

Rule absolute, and
 Order of Sessions quashed.

Rex v. Welch & al.

TWO justices allow the accounts of *John Cook, Robert Wynne, and Samuel Wadley*, late overseers of the parish of *Cheltenham* in the county of *Gloucester*. The Sessions on appeal confirm the allowance, and state the following case:

Vestry have
 no power to
 appoint a de-
 puty overseer
 with a salary.

That at a vestry meeting held on the second day of *May* 1783 in the parish church of *Cheltenham*, pursuant to notice given and published in the said church for that purpose, it was agreed by the persons then present at such meeting, being upwards of thirty in number and occupiers of houses and lands in the said parish, that a person should be appointed to assist the churchwardens and overseers of the poor of the said parish in the execution of their office (such parish being very extensive and much burthened with poor) and that accordingly one *Giles Hooper* was by the majority of the persons then present at such meeting (being twenty-six in number and amongst whom was *John Greenwood*, one of the appellants) appointed such assistant; which twenty-six persons signified their consent thereto by signing their names at the foot of an agreement, entered in the churchwarden's books: that the said *Giles Hooper* by such agreement was to be paid by the overseers of the poor of the said parish out of the money to be collected by them for the poor-rates of the said parish the sum of twenty pounds, as a salary for executing the said office of assistant: that the said overseers had in their accounts taken credit for the sum of twenty pounds, as paid by them to the said *Giles Hooper* for a year's salary for executing the said office of assistant: that the said *Walter Welch*, one of the appellants, not approving of the man, though he approved of the measure, was present at such meeting, but did not sign the said agreement: and that the said other appellants, *Richard Bendall* and *John White*, were not present at such meeting, nor ever assented to the appointment of such assistant: that there are many other inhabitants and occupiers of houses and lands in the said parish, who were not present at such meeting, whose assent was not had to the

the appointment of such assistant: that it is not customary in the said parish to have such an assistant.

Cowper T. and Clyfford shewed cause in support of this allowance; and contended, that the churchwardens and overseers, being authorized to charge the parish with every thing necessary for the relief of the poor, had, especially under the present circumstances, authority to charge this new office and salary: that, where, as here, the parish was extensive and poor numerous, it was a relief and not a burthen, to have such a deputy: and in a late case, which had not indeed yet received a final decision, that of [a] the *K. v. the Inhabitants of Micklefield*, the Court seemed to approve of a suit commenced by overseers under a similar authority; and disposed to disallow only such others, as were entered upon without having previously obtained this sanction: that at the vestry all the parish do or may attend; and therefore it is, that their acts are the acts of the whole parish: and that in the present instance there was, after a regular notice, a full attendance. That in the case of the *K. v. the justices of Somersetshire*, which might probably be insisted upon on the other side, the peremptory mandamus was to [b] levy thirty pounds, the ballance of an account, *then actually in the hands of the overseers*; and, though they had *retained it* by order of the vestry to pay the expences of a lawsuit, entered into also by their order, for the recovery of charity money for the benefit of the poor and then due to the attorney employed, that it was there impossible for the court to resist such an application; as it came immediately under the letter of the statute 43 *Eliz.* [c] which requires them, "to pay and deliver over such sums as *shall be in their hands*:" but that the transaction here being unimpeachable and the money *actually paid* [d], the Court, not being fettered as they were in the other case by the express words of the act, would liberally interpret the powers given to the parish officers; and would not at any rate suffer two or three individuals, as an afterthought and from personal motives, to defeat a measure, the wisdom and policy of which had been approved by the whole parish. That should it be said, that under the st. 13 & 14 *Car. 2. c. 12.* separate overseers, wherever a parish is too extensive otherwise to

1785.

REX

v.

WELCH.

Saturday,
Jan. 5th.

[a] The next case.

[b] M. 8 G. 2. 2 Str. 992.

[c] C. 2. § 2.

[d] It was so taken by the Court and argued upon by the bar; but is not directly so stated in the case.

1785.

Rex
v.
WELCH.

receive the benefit of st. 43 *Eliz.*, may be appointed, the answer was, that the Court disapproves the policy of that act, and now [a] does not encourage the division of parishes: and that this was a mere question of accounts between the parish and their officers.

Bearcroft, in support of the rule to quash this order, insisted; that the length, which the argument on the other side had gone, went nothing short of a repeal of the st. 43 *Eliz.*: that that act had given directions in what manner and by whom overseers are to be nominated and appointed: that the vestry have nothing to do either with the appointment or the accounts of overseers: that the statute also [b] required, that the overseers be *substantial householders*: that the appointment of overseers, when not of this description, has in many cases [c] been set aside: that the reason of this requisition of the statute was, not only the responsibility necessary to those, in whose hands the parish stock was to be lodged and monies paid, but also because the discharge of the duties of the office must be attended with [d] expence: that to tolerate the practice of hiring deputies would therefore be more than a liberal construction, it would amount to an absolute repeal of the act. That as the salary could only be payable out of the poors rate, it was *per obliquum* throwing on the less able part of the parish their share of this burthen: that the inconvenience would also be infinite: that, if a place of such value were to be created in a country village, it would produce an election, and all its consequent heats and abuses: that as to the *King* and *Micklefield*, it was the case of a law suit instituted nominally at least for the benefit of the parish at large; and the question upon the merits was, whether it was *bona fide* or not? a question which no doubt the Court would examine into: that, complicated as the management of the parish poor is now become, a lawsuit may sometimes be inevitable; but that for the present charge there was not even a colourable pretext: and that, if the assistance of a fourth overseer were really necessary in this parish, another might be added under the authority of the act.

[a] *Peart and another v. Westgarth*, H. 5 G. 3. 1765. 3 Burr. 1610. and *Rex v. Inhabitants of Uttoxeter*, E. 20 G. 3. 1780. ante 84. But see the case of the *King v. the Inhabitants of Leigh*, Tr. 30 G. 3. 1790; in which the Court adopt a very different notion of the policy of the Legislature in enacting the statute of 13 & 14 Car. 2. 3 Dursf. & East 746.

[b] 43 *Eliz.* c. 2.

[c] 1 r. 13 G. 1. *Foley* 5. M. 20 G. 2. 2 Str. 1261.

[d] 1 Burr. fo. 448, 451.

Lord

Lord Mansfield.

This is a hard case, especially as they have paid the money: but I cannot make it a legal act. A great burthen is thrown on overseers, but the statute meant they should discharge the duties without [a] fee or reward.

Bearcroft. The great aim of the appellants is to prevent the establishment of a principle, which they think would prove in its consequences very mischievous. The money actually laid out shall be repaid.

Per Curiam,

Rule absolute and both
Orders of Allowance quashed.

1785.

REX
v.
WELCH.

[a] See the opinion of Aston J. in the case of the K. v. Lord Ashburnham in the notes upon the next case.

Rex v. Inhabitants of Micklefield.

TWO justices allow three rates one of seven shillings in the pound, bearing date the 12th day of May 1783, another of seven shillings and sixpence in the pound, bearing date the 14th day of June, and another of in the pound, bearing date the 15th day of December following, made for the relief of the poor of the township of Micklefield in the West Riding of the county of York.

An overseer, proceeding through all the stages of an expensive suit without the concurrence of a vestry, is personally liable. An action

will not lie against an overseer, till the money is in his hands. An appeal to the poor's rate must be at the Sessions, next after notice of a gravamen having arisen; unless the overseer refuses to shew the rates: and publication of the rate is such notice.

Upon the appeal of *John Stables*, alleging that he was aggrieved in that, first, the appellant was over-rated, secondly that another person was under-rated, thirdly, that several other persons were not rated at all, fourthly, that the two first rates were for other purposes than the necessary relief of the poor, the Sessions holden on the 7th day of October 1783 quashed the first rate, which they stated to have been done by consent of parties. They further stated, that the second at 7s. 6d. in the pound amounted to 196l.; although it appeared, that for several years the poor had never cost 20l. a-year, and that at that time there were only two paupers in the township: and that the respondents being required to shew what extra expences they had been at, it appeared, that in

1778

1785.
 REX
 v.
 The Inhabi-
 tants of
 MICKLE-
 FIELD.

1778 an indictment was preferred by them against the appellant (who was himself at that time the overseer of the poor) for not settling his accounts; but that by an agreement between the parties and by an order of the court a reference was made to Mr. *Farker*; and that he awarded, that the sum of 65*l.* 13*s.* 8*d.* was due to the appellant; for which sum (after the respondents had refused for the space of four years to pay it to the appellant) he was obliged to bring an action; and on the trial at the assizes at *York* obtained a verdict: and that the Court was unanimously of opinion to quash the second rate, as being for other purposes than the necessary relief of the poor. They further stated that the third rate was quashed for inequality only, it appearing to the court that a rate of a former year had been confirmed on an appeal; and that the present rate differed from that, without any alteration having happened in the circumstances of the township to render such a change of the rate necessary.

There were other facts either in the general state of the proceedings referred to in the case, or admitted at the bar: *viz.* that the appellant, *John Stables*, paid one sixth of the rates of the whole township, and that the usual annual rate did not amount to sixpence in the pound; that the defendants in the action were sued as the overseers of the parish, and that the referee was an attorney of *Halifax*.

Wednesday,
 Jude 16th.

Fearnley shewed cause on behalf of the appellant and in support of these orders; and insisted, that the principal question arose upon the second rate, as stated in the case, and which had been quashed; as having been made for other purposes than for the necessary relief of the poor: that, except for such relief, the overseers could only raise money for stock to set the poor on work [a]; putting out apprentices or purchasing workhouses [b]: that the sum of 196*l.*, raised at one rate, under the circumstances stated, could not be for the benefit of the parish: that no opinion of the parish had ever been given upon the propriety of instituting and defending the two suits, to reimburse the expences of which this rate was made: that at least no such opinion respecting them ought to have been given, was proved by the award: and that no vestry had been called to authorize this rate.

Cockell in support of the rule to quash this rate insisted; that it never had been doubted but that, in a rate for the relief of the poor merely, incidental law charges, necessarily occurring, might be included:

[a] St. 43 Eliz. c. 2.
 [b] 9 Geo. c. 7. § 4.

that

that this rate does not appear to be for other than such purposes: that this was a dispute about money, which had not yet been raised; that the appeal was therefore premature, and that the appellant ought to wait till there was a misapplication of the monies; till which time he is not aggrieved [a]: and the sum of 65*l.* is money actually paid by the overseers for the parish to the appellant, who recovered it as money by him expended in the execution of his duty as an overseer, and who now complains of its being raised by the present overseers.

Fearnley. When it appears that the overseers are levying money for purposes for which they have no authority, though the money is not raised, a gravamen arises, and the party may complain [b].

Buller, J.


But if the fact be, that the rate was not for other purposes than the relief of the poor, no matter what the justices state as their opinion: and the justices are wrong; for, as far as the 65*l.* paid, the parish are liable: and as to the rest, the case is imperfectly stated.

Willes, J.

I think the case not full enough. We should have been informed whether any vestry was called, and whether the defence was carried on with the concurrence of the parish: but at any rate the 65*l.* paid by the defendants, as overseers, ought to have been allowed them.

Ashurst, J.

Wherever money is expended for the good, and on the business of the parish, the overseers must be reimbursed; but I cannot agree with Mr. *Cockell*, that there can be no appeal, till an actual misapplication: for how does it stand? The intent of the statute 43 *Eliz.* is, that the necessary assessments be raised upon the inhabitants in discharge of burthens accruing during their inhabitancy: there ought not therefore to be a sum raised in one quarter equal to the exigencies of the poor for a whole year; and much less, as here, for those of seven years. The moment such a rate as the present is made, it is a misapplication of the power of a parish officer, as against the parish; for it is assuming a right of

1785.

 Rex
 v.
 The Inhabitants of
 MICKLEFIELD.

[a] 17 G. 2. c. 33. § 4.

[b] The words of the section referred to are "in case any person find himself aggrieved by any rate, &c. or shall have any material objection to the sum charged therein or to such account as aforesaid or any part thereof, or shall find himself aggrieved by any neglect, act, or thing, done or committed by the churchwardens and overseers of the poor, &c." he may appeal.

1785.

REX

v.

The Inhabi-
tants of
MICKLE-
FIELD.

taking money out of their pockets, which the overseers have no authority to take; and is an immediate grievance, as in the interval the present tenants may quit their farms. Whatever therefore may be the case as to the 65*l.* and though the parish ought to bear all reasonable law expences, still what authority, what order of vestry is there here for the overseers defending an expensive suit, in which they are clearly in the wrong? With this they ought not to charge the parish. An overseer is not to commence a prosecution of his own head.

Buller, J.

I agree, that the overseers are not to raise seven years maintenance of the poor in one quarter: but as to the 65*l.*, they are entitled; for they have actually paid it. The great difficulty arises from the action. It is a very modern practice to bring an action against an overseer, before he has money in his hands: the old practice and the law is, to apply for a *mandamus* to make a rate: had this course been pursued, the question would not have arisen. But the action was brought against the parish in the person of the overseer, and all the money has gone out of his pocket as overseer. This brings it to the question, whether he must have the authority of the vestry, before he can be intitled to charge the expence of a suit to the parish? I know no law that obliges him to call such a meeting. Is he bound in all cases? In some it would be impossible: there cannot be time; for the instant a writ is sued out, the expence attaches before he can call the parish together; and farther expences may accrue in the same manner: then is he not to be allowed his costs incurred thereby, though the parish should dissent? It must therefore extend to all costs incurred, unless in the case of gross misbehaviour. If this question had come before me to decide, I should have said the action could not have been maintained. The law has lodged a degree of discretion in these officers; but if in the exercise of it they lay out money wantonly and without reason, such charges may be struck out, as all bad charges may.

Willes, J.

I think there is enough to shew, that they have grossly misbehaved. The money is awarded by an attorney, in whose appointment as a referee they concurred. They refuse payment for four years, and at last drive the appellant to his action; by which farther expences and costs are incurred. This is running the parish into expence wantonly, and for so doing they are personally responsible, unless they have the authority of the parish.

Asbburst,

Asbburst, J.

I think they ought to have taken the opinion of the parish. The vestry might have determined to make the payment, either as considering the demand just, or, if questionable, not worth the hazard of a suit.

Per Curiam,

Let the order be affirmed, as to the inequality [a] of the rate; and let the case go down to be re-stated, as to the point, whether an order of vestry was made respecting the different items, of which the sum of 196 l. mentioned in the said order, is composed.

The Sessions return: That there was no vestry meeting nor order of vestry for that purpose.

Monday,
Jan. 24th.

Fearnley now moved that the re-stated order be filed and set down in the crown paper. It had been directed to stand in the peremptory paper of the first term; but it came too late.

Thursday,
Jan. 27th.

Cockell and *Heywood J. P. contra* insisted, that there was an objection, which would dispose of it at once; viz. that the appeal to the rate had not been made at the next Sessions: that this had been so decided in the case of [b] the *K. v. Coode* and others, overseers of *Penrbyn*, under circumstances much more favourable to the appellant; that there the rate was made on the 5th and the notice of appeal was on the 13th, and that the appellant applied for a copy, which he could not procure: and yet the Court thought the act so strong in that case, that they could not get over it.

Fearnley contra insisted, that nothing more appeared on the order than that the rate here was made *June* 14th. and that the appeal had been at the *Michaelmas* Sessions; but it did not appear to have been allowed by the justices [c]: that, unless the Court presumed such allowance, the objection was not let in; and that there was nothing upon the face of it, except the date, from which any such presumption could arise.

Lord Mansfield.

You cannot appeal till the rate is allowed. There is an end to the objection. Let the case stand in the crown paper.

[a] i. e. The order, which quashed the rate, bearing date the 15th. day of September.

[b] *E. 24 G. 3. 1784. ante 464.*

[c] *St. 43 Eliz. c. 2.*

1785.

REX

v.

The Inhabitants of
MICKLEFIELD.

1785.

REX

v.
The Inhabitants of
MICKLEFIELD.Saturday.
Feb. 5th.

Fearnley shewed cause in support of the order of Sessions; and insisted, that, under the facts certified by the Sessions, "that there had been no vestry meeting previous to the charge incurred by the overseers," the rate could not be supported: that the order of Sessions had been in part confirmed last term, and subject only to the above inquiry; and that the Court could not therefore consistently now say, that the whole was invalid.

Lord *Mansfield*.

But the objection of the appeal not being in time was not then made. What say you to that?

Fearnley. That it appeared from an affidavit in his hands, that the rate was made on the 28th of *June* and published, without specifying any of its items, in a general way as a rate at so much in the pound, on the day following: that the *Midsummer* Sessions were holden in the beginning of *July*, and that the appellant had not in so short an interval an opportunity of seeing or obtaining a copy of the rates; and that it would prove a source of much fraud and injustice, if parish officers, by a general publication of a rate just before the Sessions and by avoiding to give copies, could prevent their conduct from being investigated: that therefore it is, that the law considers no person as aggrieved under the statute, until demand is made of the specific sum at which he is rated. A rate may never be collected, and then there is no gravamen.

Lord *Mansfield*.

But you may appeal, because another person is left out. The assessment is itself a grievance; and there is no other time to look to but the publication.

Buller, J.

It is so determined in the case cited of the *K. v. Coode & al.*

Fearnley. Though the statute [a] says, a rate shall be sufficient on publication, yet that fact does not at all appear upon the case. We knew not what it was, till the 9th of *September* and appealed to the next Sessions.

Buller, J.

The act says, a legal rate must be allowed and published. The justices say, there is a rate. What are we to suppose? If we are at a loss, it goes at most to sending it down again to be re-stated. But Mr. *Fearnley* in the course of argument has admitted, that he has an

[a] 17 G. 2. c. 3.

affidavit in his hand, stating it to have been published. We are therefore relieved from all difficulty.

Willes, J.

On Mr. *Fearnley's* affidavit the rate is allowed on *June* 28th. and published in a general way the next day; and the appeal is not made till the *Michaelmas* following.

Ashurst, J.

In cases of hardship, as a refusal by the overseers to shew the rate, the parties should not be compelled to appeal at the next Sessions; for *lex non cogit ad impossibilia*: but here the publication of a rate at so much in the pound as 7s., an extraordinary sum, though the particular sum charged on each person is not specified, was enough to put the party on an inquiry: yet no inquiry is instituted, and the appeal by his own laches is too late.

Per Curiam,

Rule absolute and
Order [a] of Sessions, made on the
9th. of *October* 1783.
Quashed.

1785.

REX

v.
The Inhabitants of
MICKLEFIELD.

[a] The objection of the appeal not being in time applied to the first rate; but that had been quashed by consent of parties: it did not apply to the last, which bore date on the 15th. of September. To the 2d., which bore date on the 14th. of June and which was principally in question, it is directly applicable.

Rex v. Edwards and Another.

ABBOT had moved on the behalf of *Edward Edwards* and *William Morris* for a *habeas corpus* to remove them from the house of correction in the city of *Gloucester*, that they might be discharged.

The prisoners being brought up, it appeared upon the return by the commitment, bearing date the 29th day of *January* 1785 under the hand and seal of *Samuel Colborne, Esq.* Mayor of *Gloucester*, that they were charged before him upon oath as *Rogues* and vagabonds, and that they refused to be examined on oath before him, and that he therefore adjudged them incorrigible rogues, and therefore committed them to the said house of correction to be there detained "until the next general Quarter Sessions, &c. and there to receive the judgment of the Court and to be further dealt with according to law."

Justices out
of Sessions
have no jurisdiction, in
the case of
incorrigible
rogues.

And

1785.

REX

v.

EDWARDS.

Saturday,
Feb. 12th.

And now *Bearcroft* and *Abbot* upon various grounds objected to this commitment, as being illegal and void: and they first contended, that the commitment ought to have been several and not joint.

Buller, J.

You treat it as a conviction, in which case your objection might have been good: it is only a commitment.

They then insisted, that the commitment ought to have stated some specific act of vagrancy, as [a] wandering and begging; in the like manner as commitments for felony must specify that they are made for the death of some one or the like, in order that [b] the Court may judge upon a return to this writ, whether the act done be criminal or not.

Ashburst, J.

It is better that this should be expressed, but it is not [c] essential.

They then insisted, that a refusal to give an account of themselves upon oath, unless warning is first given them of the punishment they will incur, does not under [d] this statute constitute the offence of being an incorrigible rogue.

That had there been any adjudication here, it had been an act without competent authority: that the powers delegated to justices out of Sessions are expressed in § 7, and extend only to rogues and vagabonds; and that the power of adjudication as to incorrigible rogues is not given to them, but is by § 9. exclusively vested in the Sessions: that this was not a commitment for detention merely, for trial or further punishment, but a commitment in execution; and was therefore bad, because a justice out of Sessions has not jurisdiction to adjudge at all, if in his commitment he makes reference to the Sessions; or even to commit in the case of incorrigible rogues.

Cowper, J. and *Fendall* in support of the prosecution contended; that on the face of the commitment it was sufficient, if it appeared to be a charge of an offence, of which the justice had jurisdiction: that he has authority to commit rogues and vagabonds till the Sessions: and there might have been a regular proceeding before the

[a] Precedent in Burn's Justice, tit. Vagrants, vol. 4. 399. edit. 1793.

[b] 2 H. H. 122.

[c] And so is 2 H. H. 123.

[d] 17 G. 2. c. 5. § 4.

justice by way of adjudication; and the Court will presume that the magistrate has done right.

Willes, J.

But this is the act of a single justice, who first adjudges them incorrigible rogues, and then sends them to the house of correction to receive the judgment of the Sessions. This therefore is passing a judgment in a case in which he has no jurisdiction, as appears by § 9.

Fendall. This commitment is barely a detention for safe custody and future investigation: it refers to the judgment of the Sessions and further punishment there.

Buller, J.

The clause as to incorrigible rogues seems to be confined to the Sessions only. This is a commitment in execution, for it is to the house of correction; and not for trial, which is to the county gaol. It is said, the commitment is to the next Sessions, because that court may, in the case of prisoners, charged as these are to be rogues and vagabonds, add to the punishment; but in this commitment, adjudging them to be incorrigible rogues, the justice has exceeded his authority. The commitment cannot therefore be supported.

Cowper now offered the examination before the Mayor, the committing magistrate, to induce the Court to detain the prisoners.

Bearcroft. The Court cannot notice these examinations; they are not returned.

Buller, J.

They are not regularly before the Court. In a case this term from *Hastings* the Court sent a *certiorari* to the coroner, and he made an official return of them. We know nothing of these examinations.

Cowper. Cannot we annex them to the return to the *habeas corpus*?

Buller, J.

No. Not without falsifying the return of the keeper of the house of correction.

Per Curiam,

Lord *Mansfield* was absent.

Let the prisoner be discharged.

But see the case of the *K. v. Rhodes*, E. 31 G. 3. 1791. 4 *Durnf. & East* 220.

1785.

REX

v.

EDWARDS.

Easter Term

25 Geo. 3. 1785.

Rex v. Inhabitants of Thames Ditton.

A negro slave, brought into this country and continuing to live with her master and afterwards with his widow several years, gains no settlement by hiring and service.

TWO justices by an order remove *Charlotte Howe* from the parish of *Thames Ditton* in the county of *Surry* to the parish of *St. Luke's Chelsea* in the county of *Middlesex*. The Sessions on appeal adjudge the settlement to be in *Thames Ditton*, quash the order and state the following case :

That the said *Charlotte Howe* was bought in *America* by Captain *Howe*, as a negro slave, and by him brought to *England* in 1781 : that in *November 1781* the said Captain *Howe* went to live in the parish of *Thames Ditton* and took with him the said *Charlotte Howe* ; and she continued with him there in his service till the 7th. day of *June 1783*, when Mr. *Howe* died ; soon after which the said *Charlotte Howe* was baptized at *Thames Ditton* by the name of *Charlotte Howe* : that the said *Charlotte Howe* continued after the death of Captain *Howe* to live with Mrs. *Howe*, his widow and executrix, who afterwards removed into the parish of *St. Luke Chelsea*, and the said *Charlotte Howe* continued to live with her there, as before, for five or six months, when she left Mrs. *Howe* : that the said *Charlotte Howe* was during all this time childless and unmarried ; and was removed to the said parish of *St. Luke Chelsea*, as having served the last forty days in that parish.

Wednesday,
April 27th.

Palmer, in support of the order of Sessions, insisted ; that the ground, on which the settlement was claimed here, being a service at *St. Luke's*, it was enough for him to observe, that no hiring

was

was stated: that the case did not find a hiring of any kind: that it not only did not shew an express and actual hiring; it did not even disclose a single circumstance, from whence a hiring could be inferred: that indeed there cannot be any implication [a] by law of a hiring; although from facts, which do in themselves amount to a general hiring, the court will under circumstances infer such hiring (however indefinite in point of time) to be for a year: that there exists no authority, in which the court have implied a hiring upon the naked fact of a service, without something to build upon, and unaccompanied with some other fact referable to a contract: but that it was manifest from the nature of the relation that subsisted between the parties in this case, that there never was any contract at all. Let it be shewn then, in what this hiring consists?

The court now calling upon the other side, *Lee, Mingay*, and *Bond G.* in support of the rule to quash the order of sessions, contended; that in an equitable view of those statutes, which had ever received a most liberal construction in favour of settlements, the claim of the pauper was by the circumstances of this case brought within the principle, upon which those laws had been framed: that, according to that principle, minute periods of service would not give a settlement, or throw the burthen of a pauper's maintenance upon any parish; but where, for a long term, for more than a year, a party is in a condition to perform and bound also to perform service in the parish in which his master lives, he seems to be directly an object of those acts; and, if he performs such service, justly intitled to the benefits they hold out: that there was no law in this country, which, in the case of a contract for service, denied the obligation of such contract, though made to continue in force till the marriage of the party, during the continuance of his health, or throughout his life: that in the present case the slave had clearly this idea of the nature of his obligation, as she never thought of quitting the service of the family, till her master's death: that, to deprive her of her settlement, the court must hold, that she might have gone away at any time; but that it never had been determined, that a slave, brought into this country, might at pleasure leave his master: that the case of [b] the negro slave, did not go so far.

1785.

Rex

v.

The Inhabitants of
THAMES
DITTON.

[a] But now see the case of the *K. v. the Inhabitants of Long Whatton*, M. 34 G. 3. 1793. 5 Durnf. & East 447.
[b] *Ex parte Somerset*, E. 12 G. 3. 1772.

1785.

Rex
 v.
 The Inhabi-
 tants of
 THAMES
 DITTON.

Lord Mansfield.

The determination in the case of *Somerset* goes no farther than that a master cannot take a servant of this description out of the kingdom by force; for the moment a man lands in this country he becomes so far possessed of liberty, under what engagement soever he lands, as to be perfectly free from arbitrary imprisonment of his person.

They then asked, if he could not leave his master, if the parties came into this country in the relation of master and servant, how was this relation dissolved? and, if that relation subsisted, was not the servant intitled to a recompence for his services, as large as they are intitled to claim, who serve for a less period?

Lord Mansfield.

In the case of *Somerset* the court reasoned by analogy to the law of villenage [a]; and I have frequently had before me actions for wages brought by slaves, but I have ever denied that they were intitled to recover. They are intitled to maintenance.

They then contended, that it was sufficient for their purpose, if support might be taken as equivalent for wages; and that when the party, who was brought here under compulsion by the person under whom he had performed his contract of service for more than a year, had no longer any such person to look to for support, and was unable to support himself, he was intitled to subsistence from the country; and, like any other servant, might claim it in that parish, which he had benefited by his labor: and *Bond* further contended, that, though there was no proof of the nature of the contract of slavery, it had been defined by [b] Grotius, to be a perpetual obligation to serve in consideration of a similar obligation to find support; and that this was a species of contract known to the laws of this land and recognized in many [c] of its statutes: that the law of England also admitted the principle, that a retainer for life may exist [d]; and then, if a state of slavery existed only by the laws of other countries, it was by no means repugnant to the principles of our own, to support as much of this contract as was consistent with our own laws:

[a] They recognized the doctrine of Talbot, Attorney General; that a man, by confessing himself such in open court, might still become a villein in gross.

[b] De jure belli & pacis, l. 3. c. 14. s. 2.

[c] 1 E. 6. c. 3. where throughout very slight misconduct is in express terms made to subject the party to this degrading condition; and 5 G. 2. c. 7. s. 4. for the sale of negroes in the plantations to satisfy debts, &c.

[d] Yearb. 2 H. 4. fo. 14. pl. 12.

that

that it had accordingly been holden, that the contract itself exists, wherever the party goes, here as well as in other countries: that the abuse indeed ceases here, and the party is under the protection of the laws, but that whatever respects personal service remains: that it is so laid down in [a] *Blackstone*, and in the case of [b] *Somerset*, the negro: that such a negro is intitled to take gifts or legacies to his own use, has been determined [c] in Chancery; and that he cannot be demanded as a chattel, but that the remedy by his master, if he is taken away, must be by trespass *per quod servitium amisit*, not trespass for the taking, [d] has also been adjudged: that the privileges and punishment of a black servant brought into this country and every native of it in that station of life were therefore the same: that the pauper for the above reasons must, in the language of [e] this statute, have been *lawfully hired*, and consequently intitled to a settlement; unless a contract for service during life entered into by a negro abroad, a contract and relation acknowledged and enforced by the English law, is to this intent and for this beneficial end, alone denied to subsist: that, if he was a servant at all or in any view, the question was then simply, whether he was retained agreeable to the terms of the act; nor could it be necessary, that he should have been the immediate object of the legislature; whose attention would only be directed to the relation of master and servant, and could not be supposed to descend to the colour of the party or the nature of the service or contract: that, though this case speaks of a *buying* or *purchase* by the master, it was yet, with a view to the present question, the same thing in substance as a *hiring*; and was in fact a hiring for a service of a much longer duration than the act required: that, where there was some interest remaining, some reversion in the original owner or person hired, it was a *hiring*; where there was not and the whole was transferred to the master, it was a *purchase*: that it could not be supposed to be the object of the legislature to exclude those, who could not hope to be released from their obligation so long as they were capable of rendering useful service, while they intitled such as were bound comparatively for a short season: that, as to the contract being made by a third person and

1785.

Rex

v.

The Inhabitants of
THAMES
DITTON.

[a] Comm. 1. 425. 127.

[b] E. 12 G. 3. 1772.

[c] *Shandley v. Harvey*, Mar. 1762, cor. Ld. Northington Ch.[d] *Chamberlain v. Harvey*, H. 8 W. 3.

[e] 3 W. & M. c. 11. s. 7.

1785.
 Rex
 v.
 The Inhabi-
 tants of
 THAMES
 DITTON.

not the negro himself, its legality in that respect must be referred to the decision of the laws of those countries in which the contract was formed; but that there were various cases in which the laws of *England* allow one person [a] as well as several [b] descriptions of persons to contract that others shall serve, and that for no inconsiderable portion of their lives. That, in another view, though by the statute [c] of tenures villeins regardant had been virtually abolished, villeins in gross were considered as yet existing: that if the pauper could be taken as falling under the latter denomination, there could be no reason to suppose, that he was not made an object of the poor laws: that the system of the poor laws was matured in the reign of *Q. Eliz.* and if such a class of persons did or could then exist, there could hardly be imagined more fit objects of those provisions: but if the construction could be admitted, that this species of servants were alone meant to be excluded, no negro could be relieved in any other character than that of a casual pauper; and in that he would not be so well provided, if he could obtain an adequate support.

Lord Mansfield.

This case does not admit of argument. The poor laws are a system of positive laws, created by many statutes. They began in the reign of *Q. Eliz.* The law of villenage was not then abolished, and villenage in gross may perhaps exist at this day; but, by lapse of time and change of manners in the people, it is now altogether in disuse as it was almost at that time. But this statute is not adapted to the case of villenage: there is not a word throughout it applicable to that state: the legislature had nothing like it in contemplation. To become intitled under this positive law, a person must bring himself under the description given by that law. His colour, or his being born a slave, or his having become such, will not affect the question; but the statute requires a hiring, and there is none here. There is nothing in it.

Willes, Ashburst, and Buller, Justices, concurring,
 Rule discharged, and
 Both Orders affirmed.

[a] 5 Eliz. c. 4. f. 26 and 35.

[b] 43 Eliz. c. 2. f. 5. 2 and 3 Anne, c. 6. 28 G. 3. c. 48.

[c] 12 Car. 2. c. 24. f. 1, 2, 7.

Rex v. Inhabitants of St. Mary Guildford.

TWO justices remove *Thomas Tull* and *Mary*, his wife, from the parish of *Saint Mary* in the town of *Guildford* in the county of *Surry* to the parish of *St. Martin's in the Fields* in the county of *Middlesex*. The sessions on appeal adjudge the settlement to be in *St. Mary Guildford*, quash the order, and state the following case:

That the said *Thomas Tull* derived his settlement from his father, who had rented a tenement of above ten pounds a year in the said parish of *Saint Martin in the Fields*: that after his father's death he the said *Thomas Tull*, at the age of 11 or 12 years, went to live with his uncle, who was a taylor, in the parish of *South Mims*, and worked for him and learned his business: that at the expiration of two years his uncle proposed, that he should become his apprentice: but they had some difference about it, and the said *Thomas Tull* refused to be bound: however, he continued to live with him, working in and learning his business, till about the age of 17, and was provided with board, lodging, and necessaries.

Silvester, who was to have shewn cause in support of the order of sessions, stated, that, as the court had in the preceding case decided, it was necessary that an express hiring should be shewn, he could at most only contend, that after a service of many years a hiring might be implied; but, if the court were of opinion that that point could not be supported, he would give them no further trouble.

Per Curiam,

A hiring is certainly necessary [a].

Rule absolute, and
Order of Sessions, discharging the Order
of Justices,
Quashed.

A boy, living with his uncle several years and working at his trade for his board, lodging and necessaries, does not, without a hiring, gain a settlement.

Wednesday,
April 27th.

[a] But see the case of the *K. v. the Inhabitants of Long Whatton*, M. 34 G. 3. 1793. 5 Durnf. & East 447. and see the note ante p. 443.

1785.

Rex v. Sillis & al. Inhabitants of the Hamlet of Lakenham.

If the proportions, in which real and personal property is assessed, are apparently unequal (viz. one half of the realty and one fortieth of the interest of the personalty at four per cent.) the court will quash such poor rate.

THE mayor of *Norwich* and another justice by their warrant allow a rate of 14*l.* 19*s.* 6*d.* made for the relief of the poor in the hamlet of *Lakenham* in the city and county of the city of *Norwich*.

Upon the appeal of *Francis Sillis* one of the assessors and collectors of the poor rate, on behalf of himself and all other occupiers of lands and houses in the said hamlet, against this rate, their notice amongst other things set forth, "That the rate was unequal and unjust, because the persons, having and using stocks and personal estates and having money out at interest in the several other parishes and hamlets in the said city and county, are not assessed and rated in equal proportions, as near as may be, according to their several and respective values; whereby the said hamlet of *Lakenham* and the several occupiers of lands and tenements therein are much overated."

The warrant of the magistrates was grounded upon the certificate of the governor and guardians of the poor under their common seal, by virtue of an act of the 10th of *Q. Anne* c. 6., intituled, the *Norwich* workhouse act; empowering the court of assemblies held before the governor, deputy governor, assistants, and guardians to ascertain the sums necessary for the maintenance and employment of the poor within the city and county of the city; and requiring the officers aforesaid under their common seal to certify the sum so ascertained and the proportion, which each hamlet, &c. was to raise, to the mayor and justices; and requiring also the said mayor and justices to issue their warrant empowering their agent to assess the said sums on the respective inhabitants, and on every parson, vicar, occupier of lands, houses, tenements, tithes impropriate, appropriation of tithes, and on all persons having and using stocks and personal estates within the city and county of the city, or having money out at interest, in equal proportion, as near as may be, according to their several and respective values and estates.

The sessions, after stating the above facts and reciting the act of parliament, in which the principal part of those facts are contained, confirm the rate, and state the following case:

It appeared to this court and was admitted by all parties, that, soon after the passing of the said act, the same was carried into execution;

cution; and that, from the year 1721 to the year 1731, the supposed personal property in the whole city and county paid one-sixth part of the whole sum raised for the maintenance of the poor in the same city and county: that from various remonstrances made to the court of guardians respecting the necessity of a new valuation to be made of all the real estates and of the supposed stock and money at interest and personal estate, that court in 1774 did appoint four proper persons to make and return to them an estimate and full yearly rental of the real estates, which was accordingly done, and amounted in the whole city and county to the sum of 46,760*l.*: and that court valued the supposed stock and money at interest and personal estate in the whole city and county at 1,600,000*l.*

In consequence of these valuations, so respectively made, the mode adopted in and through the whole city and county aforesaid, for an equal assessment of the real estate, was one moiety of the rack rent, and of the supposed stock and personal estate or money out at interest one fortieth part of the interest thereof at four pounds per cent.; from the great difficulty of ascertaining with any degree of precision the real quantity thereof.

In pursuance of this mode of assessment the rates have been uniformly made from 1774 to the time of making the rate in question; and, at the time of making the rate in question, the corporation of guardians of the poor in the said city and county upon the rentals of real estates in the whole city and county, amounting to 43,430*l.* assessed one moiety or half part, namely 21,715*l.* and upon the supposed personal property in the whole city and county, amounting to 1,269,500*l.* assessed one fortieth part of the interest thereof at and for the rate of four pounds per cent.: by which mode of assessment the supposed real estates contributed and paid towards a quarterly rate of 2,298*l.* the sum of 2,171*l.* and the supposed personal estates the sum of 127*l.*: and it further appeared, that the rate for the hamlet of *Lakenham* was the proportion of the aforesaid sum of 2,298*l.* according to the above mode of assessing real estates; and that at present in the said hamlet of *Lakenham* there is no personal estate.

And thereupon it was moved by the counsel for the appellant, that the said rule, so as aforesaid issued, be quashed; but this court, upon due consideration of the premises, and it having from thence appeared in their opinion that the mode adopted for the assessment of all the real estates within the said city and county is an equal mode of assessment, and that, respecting the supposed stock and personal estates

1785.

REX

SILLIS & al.
Inhabitants
of LAKEN-
HAM.

1785.

REX

v.
SILLIS & al.
Inhabitants
of LAKEN-
HAM.Wednesday,
June 16.

Nov. 17.

estates or money out at interest, although one fortieth part of the interest thereof is only assessed, yet such mode of assessment contained a relative equality, as the exact quantum of the whole thereof cannot in its nature be ascertained, and more especially such part as is used in trade,

Therefore this court doth order that the aforesaid rate be, and the same is hereby allowed and confirmed.

This case stood in the paper for argument last Trinity term, when the court, struck with its resemblance to those of the *King v. Hardy*, and the *King v. Brograve*, directed it to stand over to the next term: and then *Bearcroft*, *Cowper*, *Partridge* and *Harvey*, shewed cause in support of the order of sessions, confirming this rate; and contended, that this was simply a question, whether the justices at sessions were judges of a fact: that the objection, insisted upon, was merely to the disproportionate contribution made to the rate by the personal property in this district: that no doubt personal property must here be brought to account, as express direction is given that it should be included: that however this direction did not, in the way in which it was required, make this more feasible than before it was: that it was true, that in point of law it was here liable to be rated, but that in point of fact such a rating was impossible: that, where there is no clear guide, no certain clew, to lead to the truth, the acts of magistrates, in whom a confidence is by the law reposed, and against whose conduct no charge is made, are intitled to respect: that, independent of this consideration, equality or inequality was a fact: that, as such, it was, in their mixed character of juror and judge, more particularly within their province than that of the court: that the court had a similar fact to consider in the case of [a] the *King v. Brograve*; in which *Yates J.* emphatically declared, that "the court cannot enter into the inequality, unless it appears to us to be self evidently, necessarily, and unavoidably unequal:" that this was not a case of that description: that the court had also there said, that they could not presume inequality, because the party had himself acquiesced and submitted for four years: that here there had been that acquiescence and submission for ten years, and consequently more than double reason for rejecting the presumption of inequality: that there had not been since the passing of the act, during a period of 70 years, a single instance of rating the two species of property in any thing

[a] M. 10 G. 3. 1769. 4 Barr. fo. 2493.

like the same proportion: that it is enough, if these proportions have a relative equality, and of this their own acts for ten years and the judgment of the domestic and constitutional forum afford the best evidence: that there had been two instances under this act of appeals against this mode of rating: that the first was that of [a] the *King v. Hardy*, in which Lord *Mansfield* went upon the ground, that "the justices thought the rate equal," and the other, which arose a year and half afterwards, the *King v. the Inhabitants of the hamlet of Eaton*; in which, the court of quarter sessions having concluded, as here, that the rate was in their judgment equal, the counsel for the appellants gave up the point: that, further, under the present finding it was impossible to say that the inequality was "manifest," as in the *King v. Brograve*, the court in terms declared it must be; because the supposed personal property is throughout this case the phrase uniformly made use of; and that this is not an affirmation of a nature so definite, that an "unavoidable" conclusion can possibly be built upon it.

Lee and *Mingay*, in support of the rule to quash this rate, insisted, that the question here was not, whether it was practicable to weigh out justice by the nicest balance and in golden scales; that this was hardly attainable in the apportionment of any one species of property under any rate made upon any construction of the statute 43 *Eliz.*; but that the question was, whether a glaring inequality, and a gross abuse; should any longer be submitted to; or, in other words, whether a private statute, adapted to the occasions and necessities of a great trading town, in which personalty constituted the principal part of their property, should or should not in one of its main objects be repealed? that it appeared, that for ten years personal property had contributed a sixth; that personalty since that time, the year 1731, had not decreased in this city, and that it now paid only an eighteenth: was it a relative equality, as had been argued, or was it not an absolute inequality, when 43,430*l.* of real property paid 2,171*l.* per ann., and 1,269,500*l.* of personal property paid only 127*l.*; when 10,000*l.* at 4 per cent. contributed 2*s.*, and an occupier of 20*l.* per ann., the moiety of which is subject to the assessment, made exactly the same payment? that, if the intire visible real estate, without deduction for incumbrances of any sort, is liable, by what rule is per-

1785.

REX

v.

SILVER & al.
Inhabitants
of LAKEN-
HAM.

[a] E. 17 G. 3. 1777. Cowp. 579.

1785.
 REX
 v.
 SILLIS & al.
 Inhabitants
 of LAKEN-
 HAM.

sonal estate to be wholly exonerated? that this court should be aware, that the real assessors, i. e. the court or assemblies holden before the governor, &c. and guardians of the poor, were a different set of men from the mayor and justices.

That, with respect to *Hardy's* case, that was the appeal of an individual, and against "the mode of assessment adopted and used in the parish of St. Clement" only; this of a whole hamlet against the rate for the whole city, which consisted of 36 parishes; and a general question as to the economy of the city at large: that *Hardy* had also, for ought that appeared, a personal estate equal to that of any one in the city; but that here the case expressly stated, that there was no personal estate in the hamlet of *Lakenham*: and that consequently it might have been equal with respect to him, though it could not possibly be so here.

Lord Mansfield.

I doubt, whether this case is parallel to those, which have been adjudged; and wish to see, whether the parties are willing to come into terms.

Let it stand over till next term.

H. 25 G. 3.
 Feb. 5.

The case standing now in the paper, *Bearcroft* observed, that the appellants had not made any specific proposal. To which *Mingay* answered, that the city in 1780 had proposed, that the appellants should pay one tenth of the rate; and that they were ready to accede to these terms.

Per Curiam,

Let it stand over till next term.

Wednesday,
 April 20.

And now *Mingay* having stated, that the proposal made had not been accepted,

Buller J.

They state, as the foundation of this assessment, the proportion, which one species of property bears in value to another: and this proportion is *apparently* unequal.

Per Curiam,

Rule absolute, and
 Order of Sessions, confirming the rate,
 Quashed.

1785.

Newby v. Wiltshire.

THIS was an action, brought by the plaintiff, an officer of one parish, against the defendant, who lived in another, for money paid, laid out and expended to the use of the defendant for the maintenance and cure of a poor boy, the defendant's servant. The defendant pleaded the general issue. The cause was tried at the last assizes for the county of *Cambridge* cor. *Ashburst* J., when a verdict was found for the plaintiff with 32*l.* 12*s.* 7*d.* damages, subject to the opinion of the court upon the following case:

That the defendant is a farmer at *Thaxted* in *Essex*, and is a man of property and substance there. In May 1784 the defendant sent his waggon to *Cambridge* with two servants, one a man, the other a boy: and, in returning from *Cambridge* with a waggon-load of oats, when they came to the parish of *Sawston* in the county of *Cambridge*, the boy sitting on the shafts of the waggon, a cart happened to pass by them, and the whip of the driver of the last touching one of the waggon horses, as they passed, the horse took fright and started aside; whereupon the boy fell off the shafts, and had his leg and thigh fractured by a wheel of the waggon going over him, so that he could not be removed from the parish of *Sawston* without endangering his life. That the plaintiff, who is a parish officer of *Sawston*, took care of the boy, and employed a surgeon to attend him; and expended in his necessary maintenance and cure 32*l.* 12*s.* 7*d.*, for which this action is brought. The defendant knew of the accident the same night it happened, and six weeks afterwards went to *Sawston*, when he found the surgeon going to cut off the limb of the boy which had been fractured; and, before the operation was performed, the defendant asked the boy, if he consented; and, the boy consenting, the limb was taken off. The boy was a yearly servant to the defendant at 1*l.* 10*s.* a year, and was settled at *Thaxted*; and after the cure he served out his year with the defendant, and received his whole year's wages.

Sayer for the plaintiff made two points; and contended, 1st, that a master is, under the general rule of law, liable personally for the cure of his servant who becomes sick or is disabled, wherever the visitation or accident happens, if it arise during his service: and 2^{dly}, that, under the particular circumstances of this case, he had made himself liable.

A servant, whose limb is fractured by a fall when sitting on the shafts of his master's waggon, is a casual pauper in the parish in which he falls; and must be supported and cured at their expence, and not at that of his master.

Friday,
April 22.

1785.

NEWBY

v.
WILT-
SHIRE.

As to the first point, that the master is liable by the general law, he urged; that, if no express authority could be adduced to the contrary, this seemed to follow as a necessary consequence of those principles of humanity, upon which the law of *England* was established, and was supported by every inference and analogy that could be made to the determinations of our own courts or the tribunals of the civilized nations of antiquity: that by the Roman law a slave neglected in sickness became *ipso facto* emancipated: that it had been laid down by Lord Mansfield in the case of [a] the *King v. the Inhabitants of Christchurch*, "If a servant is taken ill by the visitation of God, it is a condition incident to humanity and implied in all contracts: the master is bound to take care and provide for the servant so [b] taken ill in his service, and cannot deduct wages in proportion to the continuance of the servant's sickness:" that medical aid is a provision as plainly implied in the contract as food, and more obviously so than wages: that it has been adjudged [c] to be neither in the power of the master or the magistrate to discharge an apprentice, though labouring under an incurable disease: that in many diseases of this description which do not threaten loss of life or immediate danger, the humanity of the law will not allow the master to let his apprentice languish, or not to apply to medical aid during the service, to prevent the increase or palliate the evil that cannot be cured: that not only an action upon the case *per quod servitium amisit* lies [d] by a master against a surgeon for protracting the cure of his servant; but that, in actions of this sort brought by parents for seducing their daughters, plaintiffs have always recovered as well for the medical assistance and cure as for the loss of service.

Buller J.

But these expences are laid as aggravation only.

Sayer. That there was no other person, upon whom this charge could fall: that ultimately a parish can only be compelled to support its own poor; and, though it was true that they may be obliged to advance money and make provision for casual poor, they are yet intitled to recover sums, so laid out, of the parish, to which the party relieved belongs: that of what parish such pauper is a legal inhabitant may be a question, that as far as depends upon facts may be involved

[a] E. 33 G. 2. 1760. Burr. Settl. Cas. fo. 497.

[b] It was the case of a menial servant, frightened into sin.

[c] Rex v. Inhabitants of Hales Owen, Tr. 4 G. Str. 99.

[d] Everard v. Hopkins, H. 12 Jac. 2. Bulstr. 332.

in doubt, and if the facts are ascertained, might be still subject to legal difficulties: that to have thrown the burthen in such a place would not have been politic in the provisions of the law; would not have furthered the cause of humanity, as it would have left a troublesome as well as precarious remedy to those who extended relief; when, in the character of master, there existed a relation well known, and a person responsible.

But that 2., independent of these considerations, under the circumstances of the case, the master had here made himself liable: that he had become so by attending as a party, and authorizing the most important step taken by the plaintiff: that it was true he never had been present, till the limb was amputated; but, if there was originally an obligation upon the master to fulfil this duty, the plaintiff from his first attendance must be considered as the master's agent: that this principle was recognized in the case of [a] *Watson v. Turner* and another; which was an action by an apothecary against the overseers of a parish, for the cure of a poor inhabitant: "the pauper was suddenly taken ill, and the plaintiff attended her without the previous request of the overseers, and cured her, and afterwards the overseers promised payment. It was holden good; for they were under a moral obligation to provide for the poor."

Wilson G. for the defendant took three objections to the form of the action; and insisted 1st, that it could only be supported in the name of all the parish officers: that the plaintiff was stated in the case itself to be *a* parish officer and not *the* parish officer; and that it sufficiently appeared, and was a necessary inference from such statement that there were more officers than one: but that, independent of what appeared upon the face of the proceedings, the court would presume the appointment of overseers to have been properly made under the 43d of *Eliz.* 2d, That the payment, not appearing to have been made by the parish under any order of a magistrate, was voluntary; and, under the authority of [b] *Simpson v. Johnson*, could not be enforced. 3d, That the action should have been brought by the servant himself or the surgeon, and not by the parish officer, who could not intitle himself to an action against the master by having paid his debt without request; it being a clear principle, that a right of action cannot be transferred, as was solemnly settled in the case of [c] *the London Assurance Company v. Sainsbury*: that if it were

1785.

NEWBY

WILT-

SHIRE.

[a] Exch. Tr. 7 G. 3. Buller's Nisi Pri. 147.

[b] M. 19 G. 3. 1778. Dougl. 7.

[c] Tr. 23 G. 3. 1783.

answered,

1785.
 NEWBY
 WILT.
 SHIRE.

answered, that the parish officers were not mere volunteers, as they were in the first instance liable to this demand, this argument would of itself show, that the master was not; that the object of the act was attained by somebody being liable, and there was consequently sufficient assurance that the cure would be undertaken: that there could be no reason, that the master should obtain for his servant that, which the parish would not have obtained for one of their inhabitants not in service: that, had this boy not been in service, the parish officers who relieved him, could have had no remedy against the parish, to which he belonged: that, after he had become chargeable, they might have removed him; but that there were no means by which they could have obtained reimbursement, for what they had expended before the removal: that there was no other instance of the repayment of money so advanced, but in the case of a militia man's family; in which case the order to reimburse and to relieve is made at the same time; and such case is consequently no exception to the general principle, that a parish could not be reimbursed for relief given before the order of removal: that by analogy the master here could not be liable for relief given to his servant, before the servant could be sent home: that then, if the master refused to receive him, the master might be compelled by a justice's order: that, were it otherwise, if it was the master, who, during the continuance of the service, was liable to this charge, should the service chance to expire before the cure was completed and the servant fit to be removed, the parish in which he became a casual pauper would have a remedy against the master for the first part of his cure, and be without remedy against the parish, in which he was settled, for the other part; which would be absurd.

That the case of *Watson v. Turner* was so far applicable, that it proved medical relief to be within the meaning of *relief* under the poor laws; and that the pauper's parish was liable to find it without an express undertaking; but, without some authority to the point, or some strong ground of convenience or necessity, that this court would not think themselves warranted to shift the burthen upon another person, and give a remedy over against the master.

That upon the general question, whether a master is liable for medical assistance to his servant, all considerations of humanity, all arguments drawn from such a view of the subject, as being inapplicable, ought to be laid aside: that, if under the law as it stood, ample provision was made for the safety and cure of the servant, such topics must be inapplicable, and the calls of humanity were satisfied: that

the law had made this provision; and consequently that every thing beyond could only be a question of law or policy. That there were no circumstances stated in this case to make the master liable, as there was nothing that amounted to an express undertaking; and that, if he were not originally liable, this must have been an undertaking for the debt of another, and, not being in writing, was void by the statute of frauds. That the question then was, whether the master, having lost the benefit of the service, and paid the full wages of his servant, is liable also for medical assistance, made necessary by an accident which arose from the misconduct of the servant; and which was an offence, for which he was subject to a penalty by [a] the 13th of the present king? That this liability must depend upon the terms of the contract with the servant, either as they were expressed or implied. That the *express* contract was in this case for wages, board and lodging, and could therefore extend no further; and that in many cases it was for wages only. That the idea of an *implied* contract, stated by Lord Mansfield in the case of the *King v. Christchurch*, if meant to be carried to this extent, was supported by no authority; and, as the settlement only was in question and not the wages, it was extrajudicial, a mere dictum and not an authority: but that it was not so meant: that his lordship immediately added, "Being sent to an hospital by a *kind* master ought not to hurt the settlement:" that this was not consistent with the construction put upon the former part of his judgment: that there could be no *kindness* in the master's doing that, which he was under an obligation to do: that the universal understanding and the practice of men of fortune in sending their sick servants to hospitals, where they neither ought to be sent or received, if their masters were bound to cure them, proved as plainly, as the silence of the books upon the subject, that there was no such obligation upon the master: and that this case differed materially from that which had been relied upon, as this was not an ordinary sickness or visitation, but an injury drawn down upon himself by his own obstinacy and illegal conduct.

That every argument of policy was in favour of the master: that it was better to divide the burthen by assessing it on the parish than by throwing the whole upon an individual; and that it would discourage the hiring of weakly and infirm servants, or occasion their being retained only for a term not so beneficial to themselves and not so favoured by the law as annual hirings.

[a] c. 78. § 61.

That

1785.
NEWBY
v.
WILT-
SHIRE.

1785.
 NEWBY
 v.
 WILT-
 SHIRE.

That it was true, that part of the demand was for maintenance; but that this could make no difference, as the master was bound to maintain his servant in his house and not elsewhere: that if the contract were for wages only, and the servant boarded himself with another person, or by a subsequent contract with his master, he would not be intitled, if taken ill, to board in another place at the expence of his master: that this was the same case without the circuitry of two contracts: that it was besides scarce possible to distinguish what was food and what was medicine, for every thing taken by a person in such a situation partook of each; and that the maintenance, which was inconsiderable, ought therefore to go with the cure, which was the principal expence, and fall upon the same person: but that at any rate the master, being liable on his contract, was liable only to the servant, with whom he had contracted.

Lord Mansfield,

Whether judicially said, or when other subjects were under consideration, I cannot help thinking in general, that a master ought to take care of his servants in sickness. Upon every principle of humanity he ought; but the question here is, what is the law? and no authority has been produced to shew that the parish have a remedy over against the master; and it cannot be. Parishes are bound to take care of their casual poor. There is no express contract to this purpose, nor can any be implied.

Buller J.

I think too it would be very difficult to get over the first objection to the form of the action; for, if the plaintiff sues as an officer, he cannot do this individually, if there are more officers than one: all must be joined. If he does not sue in this character, if the payment was made in his own right, he is a mere volunteer, and there is no pretence for the action.

*Willes and Ashburst, Justices, concurring,
 Postea to Defendant.*

Trinity Term

25 Geo. 3. 1785.

Rex v. Inhabitants of St. Mary Lambeth.

TWO justices by an order remove *Frances Gill*, otherwise *Matthews*, from the parish of *St. Mary Lambeth* in the county of *Surry* to the parish of *St. Saviour Southwark* in the same county. The sessions on appeal adjudge the settlement to be in *St. Mary Lambeth*, quash the order, and state the following case:

That on the 16th day of *March* 1781, the pauper was bound apprentice by indenture for five years to *Joseph Cooke* of the parish of *St. Botolph London*, with whom she continued a year and half; when, having slept out all night, on her return *Cooke* and his wife told her, she was no longer their apprentice and might go and look for another place; and gave her money to go to a register office to hear of a place: after this she continued a week with her said master, when hearing of a place she agreed to hire herself as a servant to *Mr. Harvey* of the parish of *St. Saviour* at 40s. a year: *Mr. Harvey* came to *Cooke* and enquired her character, which turning out satisfactory, he hired her on the above terms. That in this service she continued to live nine months in the said parish of *St. Saviour*; the pauper at this time was under the age of twenty-one years: but when she left *Mr. Cooke* the indenture was not delivered up nor cancelled; but *Mrs. Cooke* told her, the indentures were destroyed: this was not true as to both parts, one of them having been read in evidence. That the pauper afterwards went to a friend's house at *Lambeth* where she lived on charity, but not as a servant; from thence she hired herself as a servant

Giving a character to an apprentice is a constructive assent to his service with the party applying for it.

1785.
 ~~~~~  
 REX  
 v.  
 The Inhabi-  
 tants of  
 ST. MARY  
 LAMBETH.  
 Wednesday,  
 June 1.

to Mr. *Leaky* in the parish of *St. Stephen Walbrook London* at 5*l.* per annum, without the knowledge of Mr. *Cooke*, where she lived three months: during this service she visited Mrs. *Cooke*, her first mistress, and acquainted her where she was, who said she was glad of it.

*Bearcroft* and *Bond G.* shewed cause in support of the order of sessions, and contended, that either there never was any settlement gained under these indentures at *St. Saviour's*; or that by the same rule a subsequent one was established under them in *Walbrook*.

That, as to the first point, there was not such an assent of the original master, as was necessary to continue the service, as a service under the indentures: that whether the parties had a legal capacity to put an end to the contract was not material; for there can be no such thing as a service under an indenture, unless the master shall have transferred his right either by assignment or at least by some act, clearly expressing his assent and recognition of the party as serving in the character of apprentice: that where it is manifest, that the master had, as far as depended upon himself, put an end to the contract, he neither could mean, or could there be, any such continuation: that the whole conduct of the master and his family demonstrated, that they considered the apprenticeship as annulled: and if this were so, his acts ought not by construction to be strained, so as to make them appear to have a different object, and to give them a different effect, from that which was intended: that the master, having discharged her, meant, by the character he gave her, to do an act of justice merely, and thought of nothing less than of transferring a right, and meant to speak of her, as any other person she had served would, in the character of a servant, and not that of an apprentice; and without the least view to claims of any sort or consequences: that it was necessary also that the service should be as an apprentice, and the master having divested himself of any such character, there could be no such service any more than any such intention: and *Bond*, after citing that class [a] of cases, which shew, that a settlement may be gained under a second master by a service with the assent of the

---

[a] *St. Olaves v. Allhallow's*. Tr. 9 G. 8 Mod. 169. *Rex v. the Inhabitants of St. George Hanover Square*, M. 8 G. 1734. *Burr. Settl. Cas.* 12. *Rex v. the Inhabitants of Fremington*, E. 30 G. 2. 1757. *Ib.* 416. *Rex v. the Inhabitants of Tavistock*, Tr. 7 G. 3. 1767. *Ib.* 578.

first,

first, insisted upon those, [a] where, the master meaning to annul the contract, but not having a legal capacity so to do, the service under the second master did not give a settlement; the principle upon which Lord *Mansfield*, in giving judgment therein, having been the want of "privity between the two masters, that the second service was therefore not a carrying on of the business of the first master," and that the second service was not "performed with the leave and consent of the first master."

1785.  
  
 Rex  
 v.  
 The Inhabitants of  
 St. Mary,  
 Lambeth.

That, as to the second point, if the service at *St. Saviour's* could be deemed a service, assented to by the original master as a service of him, and a "carrying on of his business," and, as such, a service under the indentures, it must have the same consequences, and give a subsequent settlement in *Walbrook*; for it was stated, that the pauper went to the original master's house at the time she lived in this latter service, made his wife acquainted with it, and that the service was by her approved: that, though mere knowledge was not sufficient, approbation amounted to full consent; and a settlement was therefore acquired in *Walbrook*.

*Mingay* and *Palmer* were in support of the rule to quash the order of sessions; and, upon *Mingay's* stating, that the question was, whether a man's giving a character to a servant, for the purpose of her being received into a service, amounted to a consent,

Lord *Mansfield*,

There is nothing in it. The indentures subsist; they are not given up or cancelled; and the power of the master over his apprentice consequently remains. Giving a character of a former servant to one who proposes to take him, unquestionably amounts to an assent and approbation of the proposed service, of the service into which she is about to be taken; and by such assent the master has precluded himself from the right of reclaiming such servant or making any title to his future services.

*Willes*, *Ashburst*, and *Buller*, Justices, concurring,  
 Rule absolute, and  
 Order of Sessions Quashed.

[a] *Rex v. the Inhabitants of Austrey*, H. 31 G. 2. 1758. 1b. 441. *Rex v. the Inhabitants of St. Luke*, Tr. 5 G. 3. 1765. 1b. 542. *Rex v. the Inhabitants of Notton*, M. 9 G. 3. 1768. 1b. 629.

1785.

Rex v. Thomas Mytton, Esq.

If there is a positive averment of disobedience to the order of a court of competent jurisdiction, an indictment is good, without a direct allegation of that, which is the foundation of such jurisdiction: nor can a defendant otherwise avail himself, either at the trial or elsewhere, but by shewing a want of jurisdiction in the court.

ON a motion in arrest of judgment upon an indictment against the defendant, tried at *Shrewsbury* before *Eyre B.*, for neglecting to make out a correct list of the number of his male servants, and make payment for the same in conformity to the statute 21 Geo. 3. [a],

The indictment stated, that at the general quarter sessions of the peace of our sovereign lord the king held at the *Guildhall* in *Shrewsbury* in and for the county of *Salop* on *Tuesday* in the week next after the feast of the translation of *St. Thomas* the Martyr (to wit) the 13th day of *July* in the twenty-fourth year of the reign of our sovereign lord *George*, &c. and in the year of our Lord 1784, before &c. justices assigned, &c. upon the appeal of *John Faulkner*, supervisor of excise, against the judgment bearing date the first day of *November* then and now last given by *Henry Whitmore*, clerk, bachelor of laws, and *Thomas Whitmore*, Esquire, two of his majesty's justices of the peace for the county of *Salop* aforesaid, upon an information and complaint, bearing date the 28th day of *October* then and now last exhibited by the said *John Faulkner* upon oath, as well for his majesty as himself, to and before the said *Henry Whitmore* and *Thomas Whitmore* and others their fellow justices against *Thomas Mytton* Esquire of *Stanley* in the said county, for neglecting to make out, sign and deliver, or cause to be delivered a correct list of the true number of male servants by him retained or employed, and to make payments for the same according to the statute in such case made and provided; whereby the said *Thomas Mytton* incurred a penalty of twenty pounds, by which they the said justices (he the said *Thomas Mytton* appearing before them at the time and place appointed by their summons on the said information) having examined evidence upon oath upon the matter of fact arising on the said information, respecting the said *Thomas Mytton* having neglected to insert the name of *Anthony Fryer* as one of his servants in the list by him delivered to his majesty's officers of excise, and to make payment for him as a servant, did adjudge, that the said *Thomas Mytton* had not neglected, as was stated, or as in the said information was alledged, and did dismiss the said information and complaint; and did also adjudge that the

[a] C. 31. f. 3.



saïd *Anthony Fryer* was not a taxable servant: and, upon reading the saïd information and judgment, and hearing what could be saïd by counsel and witnesses on both sides, the saïd court of general quarter sessions thought fit and did adjudge, that the saïd *Thomas Mytton* was guilty of the charge contained in the saïd information, and that the saïd *Thomas Mytton* had thereby incurred the penalty of twenty pounds: but, in consideration of the circumstances of the case, and upon the prayer of Mr. *Hart* of counsel for the saïd *Thomas Mytton*, the saïd court thought fit and did mitigate and lessen the saïd penalty to the sum of five pounds, being one fourth of the saïd penalty over and above the sum of ten pounds, being the reasonable costs and charges of the officer in the prosecution of the saïd *Thomas Mytton* upon the saïd information: and the saïd court did further order, that the saïd *Thomas Mytton* should forthwith, upon notice of that order and demand thereof made, pay unto the saïd *John Faulkner* the sum of fifteen pounds, the fourth of the saïd penalty, and the reasonable costs and charges of the saïd *John Faulkner* in the saïd prosecution; and that it was ordered accordingly by the court, as by the saïd judgment and order it doth and may appear: of which saïd judgment and order of the saïd court of quarter sessions the aforesaid *Thomas Mytton*, in the saïd order mentioned, afterwards (to wit) on the 9th day of *February* in the saïd year of our Lord 1784 at *Stanley* aforesaid, in the parish of *Astley Abbots* in the saïd county of *Salop*, had due notice; and the saïd sum of fifteen pounds in the saïd order mentioned was then and there demanded of the saïd *Thomas Mytton* by the saïd *John Faulkner*: nevertheless the saïd *Thomas Mytton*, at the parish of *Astley Abbots* aforesaid, in the county of *Salop* aforesaid, afterwards (to wit) on the saïd ninth day of *February* in the year of our Lord last aforesaid and continually afterwards until the day of taking this inquisition at the parish aforesaid in the county aforesaid, unlawfully and contemptuously did neglect and refuse and still doth neglect and refuse to comply with, obey and perform the saïd judgment and order of the saïd court of quarter sessions, and to pay unto the saïd *John Faulkner* the saïd sum of fifteen pounds, the fourth of the saïd penalty, and the reasonable costs and charges of the saïd *John Faulkner*; although the saïd *Thomas Mytton*, after such notice of the aforesaid order (to wit) on the day and year last mentioned at the parish aforesaid in the county aforesaid, was required so to do, in contempt of our saïd lord the king and his laws, and to the evil example of all others in the like case offending, and against the peace of our sovereign lord the king his crown and dignity.

1785.

REX

v.  
THOMAS  
MYTTON,  
Esq.

To

1785.  
 REX  
 v.  
 THOMAS  
 MYTTON,  
 Esq.

Wednesday,  
 June 1.

To this indictment, upon which the defendant was found guilty, *Caldecott* had taken three objections: 1st, that it did not state the original proceedings before the justices any otherwise than by way of recital: 2d, that no time was mentioned within, or at, which the offence was committed: 3d, that it did not state, that the servant was retained in any of those capacities, enumerated by the act, as subjecting to a penalty.

And now *Cowper* and *Leycester* shewed cause against the rule in arrest of judgment; and, affirming, that the allegation was positive and direct and not recital, insisted, that all the rest was merely for the consideration of the justices below, and was not open to the party here: that it was all before the sessions, and this court would not review their acts; nor was that at all necessary; as this was an indictment for disobeying an order of sessions.

*Caldecott* and *Bower*, in support of the rule to arrest the judgment, insisted; 1st, that nothing had been offered in argument to support the proposition, that this offence was not charged in the indictment altogether by way of recital: that by this statute all prosecutions are to be heard and determined by two justices, with liberty to the party aggrieved to appeal to the quarter sessions, whose judgment is final: that the indictment stated, that "at the quarter sessions upon the appeal of *M.* against a judgment of *A.* and *B.*, justices, upon an information for a neglect, whereby *M.* incurred a penalty, by which the said justices, having examined, &c. adjudged, and, upon reading the said information and judgment, the quarter sessions adjudge:" that, if that part of the above instrument which spoke of the "penalty incurred, by which the two justices adjudged," could be supported, as being intelligible and conveying any meaning whatsoever, still the whole was merely recital upon recital: that there is no express averment either of the information, judgment, or appeal: no positive charge of the judgment of the two justices, which is necessary to give jurisdiction to the court of quarter sessions: that there ought to have been a direct allegation of that, which is the very foundation of the proceeding: that, where a single count in a declaration in trespass had begun by way of recital and not with an averment of the fact, judgment has frequently been arrested; and that no instance can be produced to the contrary in criminal cases, in which the rule has never been relaxed. That in the case of [*a*] the *King v. White*

[*a*] E. 22 G. 3. 1782. ante 183.

and *Eling*, which was an indictment for *disobeying an order* of a justice for reimbursing parish officers the expences of the maintenance of the family of a substitute in the militia, it was objected, that it did not appear otherwise than by inference, that there had been any previous order of maintenance to give the magistrate a jurisdiction; and the indictment was quashed; Lord *Mansfield* saying, "In indictment the crime, with which the defendant is charged, must appear with a scrupulous certainty; and here it is disobedience to the order of a justice. Now it must appear upon the face of the indictment, that this was a legal order; for, if it is not so, disobedience to it is no crime." And in the case of [a] the *King v. Winship and Grunwell*, which was an indictment for *disobeying an order* of sessions for paying to a pauper the arrear of her allowance, the court held, that if it is not alleged in an order, which is the groundwork of the charge in an indictment, that such order was made upon oath, or if it is made with reference to another order which is not stated, such indictment is bad: and Lord *Mansfield* said, "The previous question is, whether this order, for disobedience of which the defendants are indicted, is a good and legal order upon the face of it." "The sessions order all arrears of the weekly allowance to be paid: this order has a reference to a former order, which former order is not stated." "This order then, not being stated; or found to have been made upon oath, is clearly bad; and there is no enforcing it; taking it even for granted, that the justices have an original jurisdiction at the sessions."

That, if this is not necessary, and justice should have been done at the quarter sessions by their having entertained jurisdiction without any judgment of two justices to found it upon, the defendant under the decision at *nisi prius* would be without remedy. It was there objected, that there existed no such judgment, as the indictment stated; and the prosecutor was called upon to prove it. It was answered, that, the judgment being only recited, such proof was unnecessary: and of this opinion was the court. If then it was not open to the defendant at the trial to shew, that no such judgment, as the indictment recited, had any existence, because that judgment was only recited; and he cannot have his advantage of it here, because such recital is sufficient, and because it need not be directly averred, nothing more will be necessary in an indictment for disobedience of an

1785.

Rex

v.

THOMAS  
MYTTON,  
Esq.

[a] M. 11 G. 3. 1770. ante 72.

1785.  
 ~~~~~  
 REX
 v.
 THOMAS
 MYTTON,
 Esq.

order of sessions, than for a prosecutor's counsel to advise what it will be proper to state, as a foundation for the proceeding, and to state this by way of recital; and then all enquiry is precluded, and every previous stage of the business must, by intendment of law, be taken to have passed, as if it actually had passed.

2. That it should have appeared, somewhere at least, upon the indictment, *at what time* the servant of the defendant was retained; as the retainer might have been before the act took place, or the information might have been lodged before the period, within which the penalties were to attach, had elapsed.

That it is laid down [a] that nothing material in the description, nature or manner of a crime can be supplied by any intendment or implication whatsoever: that in every indictment *time* is a material allegation: that it is an undoubted principle, that none can be good without precisely shewing a certain year and day [b] of the *material facts alleged in it*: that this was indispensable here, as without a reference to time no offence exists: and it is more particularly necessary, upon the form of this indictment, in order to give jurisdiction to the court of quarter sessions, whose judgment, as stated in this indictment, is, that the defendant is guilty of the charge contained in the *said* information. The information then, as recited in the indictment, is referred to, as the foundation of all these proceedings; and the question then is, does the said information, so recited, contain a description of any offence? That without stating some time, within which the fact charged was committed, there can be no offence; as the retainer might have been before the act took place, or within the period before the penalties under it arose.

That almost every other requisite of the statute is minutely stated in the information referred to; but that, if the time, which constitutes the offence, is not necessary to be stated, not even any previous act or authority is necessary to be stated, but merely that the defendant *had disobeyed*: for, if any previous act is necessary, it must be a legal act and such as shews an authority: that such indeed had been the argument on the other side, but that this doctrine was directly and pointedly contradicted by Lord *Mansfield* in the cases cited, which were each of them indictments for the same offence, disobedience of orders: but that the information referred to in this indictment with-

[a] 2 Hawk. P. C. c. 25. § 62.
 [b] Ib. c. 78.

out any time mentioned, can give no more authority to the quarter sessions, than if it had been made for non-payment of a debt contracted in trade, or any other thing for which there is no pretence of jurisdiction in the justices: that the act therefore, which the indictment refers to, as the foundation of the guilt imputed, not appearing to be any offence, the jurisdiction, which the court of quarter sessions entertained upon the subject, must have been, as far as appears in this instrument, without any legal warrant and authority; and consequently the whole proceeding, and every thing built upon it, is void.

3. That the indictment should have stated, that the servant was retained in one of the capacities, enumerated in the act, as subjecting the master to a penalty, and shewing the authority exercised not to be an usurped authority. That for such omissions judgment has in many instances been arrested in civil actions: that in the case of [a] *Reason v. Lisle*, which was an action of debt upon the game laws, and where the act 4 and 5 Q. Ann c. 14. mentions particular dogs, as greyhounds, lurchers and setting dogs, judgment was arrested; because the declaration only charged, that defendant used a dog to kill game, without shewing, that it was any of the dogs described in the act. That there was the same defect in this indictment, as it did not bring the defendant within the provisions of the act.

In a word, that, to have been good, the indictment should have been intelligible; should have directly and positively stated, that a certain information had been exhibited; and that at a certain time a servant of a certain description had been retained: and that then there would have appeared upon the face of the instrument an offence indictable by an existing law; and a subject, of which the court, that convicted, had cognizance.

Lord Mansfield.

The foundation of the indictment is the order of sessions; and, if the sessions have jurisdiction, you cannot go into the regularity of their proceedings.

Buller, J.

The gist and foundation of the indictment is the order of sessions; and that is stated positively. The objection is, that the acts, upon which the sessions ground their authority, are recited only. Now the ground of the indictment is, that you have not obeyed the order

1785.

~

REX

v.

THOMAS

MYTTON,

Esq.

[a] Tr. 11 G. 2. Com. 576.

1785.
 ~~~~~  
 REX.  
 v.  
 THOMAS  
 MYTTON,  
 Esq.

of sessions: and we cannot by a sidewind inquire into the regularity of the proceedings of a court of competent authority. So that the act is done by those, that have jurisdiction, it is enough; and nothing could have served you at the trial, but to have shewn that the sessions had no jurisdiction.

In the *King v. White and Ealing* it did not appear, that the court had any jurisdiction; and, in the game law case, it was necessary to bring the dog within the description of the statute.

Rule discharged.

### Rex v. Inhabitants of Eyford.

**TWO** justices nominate and appoint *John Rayer* and *Silas Wells*, substantial householders of the village of *Eyford* in the county of *Gloucester*, overseers of the poor of *Eyford* aforesaid. The sessions on appeal confirm this appointment, and state the following case:

Where it is doubtful whether a place is legally and actually a vill, it is enough to justify an appointment of overseers for such place, that the sessions return, it is so by reputation.

That *Eyford* is an extraparochial place, consisting at present of a mansion house and a farm house, occupied by different persons; but both, together with the estate thereto belonging (of the yearly value of six hundred pounds) the property of one person: that twenty-five years ago there was in the same place a cottage now gone to decay, the site of which was at the time of the hearing this appeal covered by a plantation. In 1727 the occupiers of the two present houses acted as overseers of the poor of the hamlet of *Eyford*; and in 1748 *William Wanley*, the then owner of the said estate and occupier of the mansion aforesaid, acknowledged himself to be liable to maintain certain paupers belonging to the said hamlet by a certificate duly allowed: and the paupers were accordingly relieved by his tenant residing in the farm house aforesaid, till within these fifteen years; during the latter part of which time the estate in question came into the possession of Mr. *Dolbin*. Mr. *Dolbin* was a justice of the peace, and at his death left his widow in the possession of the mansion house, at which time there was likewise a widow in possession of the farm aforesaid: and it is not till within these two years that there has been any substantial householder in *Eyford*, qualified to serve as overseer. From the year 1769 to the present time the returns of men qualified to serve in the militia have been made to the deputy lieutenants by the present occupier of the farm house aforesaid, who subscribed such returns as constable. That the persons appointed overseers are sub-

stantial householders in *Eyford* occupying the two houses aforesaid.

*Bearcroft*, *Clyfford* and *Bragge* shewed cause in support of this appointment; and *Bearcroft* contended, that the question was not whether this place might have been a proper subject for such an appointment; but whether the appointment, after the justices had made it, was illegal? That this was a very different case from that of a mandamus; where the court will require full satisfaction, before they compel magistrates, in whom the law lodges a discretion, to act against the declared sense of their duty. What then are the legal requisites in this case? That the parties nominated be substantial householders, and that the place appear to be a vill. That if these facts were negatived by the case, it would be fatal; but that they are here positively found. That here are repeated actings as overseers; and overseers are officers known only in villis: that a certificate has also been granted; and there has been a constable. That such offices import, and from them the court will infer, substantiality and responsibility: and, that there actually now are such substantial householders, the case finds.

*Clyfford*. That to this purpose it was enough, that a vill be so by reputation only, had been adjudged in the cases of [a] *Hilton v. Pawle*, and [b] *Nichols v. Walker and Carter*: that this place must have had such a reputation, or the chief constable would not, under the st. 2 G, 3, c. 20. § 42., have required the constable of this place to return his list of persons qualified to serve in the militia; nor would a return have been made in that character: that this place, even in point of law, answers the description of a vill, as defined by Lord Coke; [c] villa est ex pluribus mansionibus: that if, by reference to other considerations, not less than three houses have been holden necessary to satisfy these words, as the case finds that there had been a third house in this place, the same authority again attaches; for Lord Coke in the same page says, "that if a town be decayed so as no houses remain, yet it is a town in law: that it is so even in boroughs;" and he instances *Old Sarum*, as sending in its decayed state burgesses to parliament: and this borough now consists but of one house. He added, that the above authority was an answer to what

1785.

Rex

v.  
The Inhabitants of  
*EYFORD*.

Saturday,  
Feb. 5.

[a] H. 2 Car. Cro. Car. 92.  
[b] Tr. 10 Car. Cro. Car. 394.  
[c] Co. Litt. 115. b.

1785.  
 Rex  
 v.  
 The Inhabi-  
 tants of  
 EYFORD.

fell from *Page J.* in the case of [a] the *King v. the Inhabitants of Denham.*

*Bragge.* That the principle, which must govern this case, is laid down in the *King v. Denham* by Lord *Hardwicke*, who adopts it from *Parker Ch. J.* [b]. It is, "that a settlement might be gained in an extraparochial place, consisting of more houses than one, so as to come under the notion of a town or village; and that, where the place was such as might come under the notion of a village or township, the court might, within 13 and 14 *Car. 2. c. 12.*, oblige the justices to appoint overseers." That justices may then, and ought where the case calls for it, exercise this power, without the interposition of the court: "that upon a case stated his lordship adds, the judgment of the court, as to *what* is a township or village, must be guided by the circumstances;" and that the circumstances here stated are abundantly sufficient to lead to a conclusion in favour of this appointment. That with respect to the cases, that may be insisted upon on the other side, they are all distinguishable from the present: that in the case cited of the *King v. Denham*, as also in that of [c] the *King v. the Inhabitants of Belvoir* cited therein, there were only two houses, and there never were any officers: that in [d] the *King v. the Inhabitants of the Manor of Grafton*, there never had been any officers: that in [e] the *King v. the Inhabitants of Welbeck in Nottinghamshire*, it is expressly stated, that it was not, nor never was reputed to be a village: that the *King v. Showler and Atter* [f] was a fraudulent attempt in part of the parish to withdraw themselves and avoid the burthens, that lay upon the parish at large. That in the cases of [g] the *King v. the Justices of Middlesex*, and [h] *Peart and another v. Westgarth and another*, the same objection of fraud was insisted upon; and, being parts of parishes, they were not in judgment of law under the circumstances intitled to the aid of the st. 13 and 14 *Car. 2.*: that the case of [i] the *King v. the Inhabitants of Uttoxeter* was also a contest between different branches of the same parish; but that there is no case, where

[a] E. 8 G. 2. 1735. Burr. Settl. Caf. 35.  
 [b] *Stokelane v. Dolting*. H. 11 Ann. 2 Salk. 486. in margin.  
 [c] M. 2 G. 2. Burr. Settl. Caf. 36.  
 [d] E. 10 G. 2. 1737. Burr. Settl. Caf. 101.  
 [e] M. 14 G. 2. 2 Str. 1143.  
 [f] Tr. 3 G. 3. 1763. 3 Burr. 1391. 1 Blackst. 419.  
 [g] Tr. 27 and 28 G. 2. Bott. 17.  
 [h] H. 5 G. 3. 1765. 3 Burr. 1610.  
 [i] E. 20 G. 3. 1780. ante 84.



an extraparochial place, circumstanced and called upon as this place has been, has not been compelled to maintain its own poor: that the case of [a] the *King v. the Justices of Bedfordshire* was that of a mandamus, and the facts also distinguish it; as in that case there never were any officers, though there was an attempt to shew, there had been a constable: in answer to a question of his lordship's, who were the appellants in the present case, he then observed, that one of them was the man, who had served this very office: that in the case of [b] the *King v. Briland*, Denison J. says, that the appointment of one overseer may stand: that what Lord Hardwicke says in the *Denham* case, as to the *whole parish* being *perpetual* overseers, where there are only two houses, is by way of question only, and the facts here differ; for here are three houses as well as persons capable, who have actually served two of these offices.

Wilson J., in support of the rule for quashing this appointment, insisted; that the sole question was, whether this place was really or by reputation a vill? That this must depend upon such acts of parliament and decisions upon the subject, as applied to the facts stated to the court: that, as to the argument of presumption in favour of the appointment, and that the magistrates and court of sessions must be supposed to have done right, till it was shewn that they had done wrong, the answer was; that, till the act of Car. 2, there could be no appointment of overseers by justices: that it is not very clear, [c] that such appointment in other than the northern counties can legally be made at all under that statute: that, in the *King v. the Inhabitants of Denham*, Lord Hardwicke had said, that that alone was a very liberal construction: that, the intent of the act therefore being only at most to empower them to divide *parishes*, it was going too far to give them that authority in *extraparochial places*: but that, even if the law must be taken to be so established, still it must appear, upon the facts stated, that the place is, actually or by reputation, a township or village, or the Justices have done wrong; and consequently that all the cases on mandamus's are in point: Are then these requisites to be found in the case stated? Certainly not; but its whole amount is singly, that this is an extraparochial place. But it is said, that, if not expressly stated, it necessarily arises, it may be collected, from the particular facts stated. This, I say, the court cannot do: it is not

1785.

Rex

The Inhabitants of  
Exmore.

[a] B. 22 G. 3. 1782. ante p. 167.  
[b] 19 G. 2. Bott. 5. S. C. 1. Wils. 128.  
[c] See vide But. fo. 448.

their

1785.

Rex

The Inhabitants of  
Epsford.

their province to collect matter of fact. What is a vill, is strictly matter of law; but whether any place is or is not a vill by reputation, is a fact to be stated by the court below. But what are these facts insisted upon as so particular? The case indeed states an acting, *as overseer*, but not any appointment; and, till a legal appointment, there can be no legal officer: neither is any such constable, any constable under such an appointment, stated: that to take care of a pauper under the assumed character of an overseer is nothing: that charity and humanity demand it: that they must do so; for probably they have no place to remove him to, and they dare not let him starve.

Lord Mansfield.

The case must go back to have the fact, whether vill or not by reputation, stated. I am not satisfied with the reason in some of the cases, that, because there are but two houses, there can be no vill. Suppose a parish reduced to two houses? In the *King v. Denham* Lord Hardwicke goes on all the circumstances of the case; particularly its being called a park. Lee J. puts it upon the place not having the reputation of a vill. I don't see, why under the st. of *Eliz.* there may not be an appointment of one overseer, if there is but one substantial householder. Let it go to be restated, whether *Epsford* is a vill by reputation?

Wednesday,  
June 1.

In Trinity term following the court of quarter sessions returned; that this court, having heard the parties and examined the witnesses produced on both sides, are of opinion and do adjudge, that *Epsford* is a vill by reputation.

*Lane*, who was with *Wilson* in support of the rule, now submitted; that the entire case, the whole of the facts from whence the conclusion in point of law was to be drawn, being before the court, they would not think fit to delegate their judgment to others, but would pronounce the law themselves.

*Sed per Buller J.* There is nothing now for the consideration of the court, but the legal consequence of a fact returned by the sessions. The fact returned is, that this place is a vill by reputation. This is sufficient to conclude upon the point. It is unnecessary therefore for the court, independent of this return, to enter into the general law; upon which there might be difficulty. The sessions are asked; whether it is a vill by reputation? They say it is; which must make an end of it.

*Per Curiam,*

Rule discharged.

Rex v. Inhabitants of St. Sepulchre.

**T**WO justices by an order remove *Sarah Freeth*, widow, and her three children, from the parish of *Birmingham* in the county of *Warwick* to the parish of *St. Sepulchre* in the city of *London*. The sessions on appeal confirm the order, and state the following case:

That the pauper, *Sarah Freeth*, was born in the parish of *St. Luke Old Street* in the county of *Middlesex*; and about nineteen years since married her late husband, *Charles Freeth*, who died about a year and an half ago; and that some time before his death, her said husband did, in her presence and hearing, inform the secretary of the *Lying-in Hospital* in the county of *Middlesex*, that he was, before his marriage, a written-articled servant for two years to Mr. *Richard Spital* in the *Old Bailey* in the parish of *St. Sepulchre*; and that he duly served him in the said parish, two years under the said article; and that the said service was completed before his marriage with the said pauper; and that he worked at buckle-cutting and received one guinea per week, and lodged and boarded in the house of his master, for which he paid 9s. per week. That the master, *Richard Spital*, has been dead about twelve years, and that the pauper, *Sarah Freeth*, never saw the articles under which her said husband served the said *Richard Spital*; nor were the said articles produced at the hearing of the said appeal; nor was any evidence given of any inquiry after them.

Declarations of a husband to his wife respecting his settlement seem, after his death, to be admissible evidence: but, if such declarations refer to a written instrument, unless previous inquiry shall have been made after it, they cannot be received in evidence.

Settlement in Birmingham.

*Beacroft* and *Morrice* shewed cause in support of these orders; and contended; that, the only question being upon the admissibility of this evidence, it had not been usual for this court to enter into that question or interfere, after such evidence had been given at the sessions; because other evidence, sufficient to support the case, might have been there given: that this was however sufficient and legal evidence: that the testimony of husbands, wives and parents, who were dead or had run away, was universally received as to facts respecting their settlements; and very generally as to the settlement itself: that it was true, that hearsay is not in general admissible in evidence; but that this is not the only instance, in which this rule has been relaxed: that the declarations of a bankrupt, made before his bankruptcy with respect to a doubtful act, as his intent to abscond (*i. e.* what was the meaning of his going from home to *A.*), are admissible

Wednesday, June 8.

1785.  
 Rex  
 v.  
 The Inhabi-  
 tants of  
 St. Sepul-  
 chre.

missible to show the nature of the step taken, and establish the bankruptcy; to prove which he is not himself a witness: that the declarations of a husband, now dead, at a time when he had no object in view, and must have been supported some where else if he was not settled here, are less liable to objection: and they cited the case of [a] the *King v. the Inhabitants of St. Michael Bath* in support of this proposition. That with respect to the objection, that the hearsay evidence had in this case disclosed that there existed a written document, which must have decided the question if produced, but which had not even been inquired after, they insisted; that the law never required any one to do an act that was nugatory, and from which no fruit could arise: that here the master had been dead twelve years: that this being a contract, which was good by parole, and to which, when reduced into writing, no stamp was necessary, there was no public repository to which resort might be had to ascertain the fact: that in the case of an apprenticeship, where the indenture must be stamped and might consequently afford this evidence, the court after an interval of no more than half this time, a service being proved, in favour of a settlement presumed that there had been an indenture, though no search had been made: that this court had so adjudged in the case already cited: that in the case of [b] the *King v. the Inhabitants of East Knoyle*, where the binding was proved by parole, the court, though no search had been made after it, presumed the indenture. That with respect to the case of [c] the *King v. the Inhabitants of Saint Helen's in Abingdon*, which might be cited on the other side as an authority to show that parole evidence of an indenture was insufficient proof to establish a settlement, without application to executors or a proper search made, they insisted; that that case was plainly distinguishable: that there a very strong presumption arose, from the facts stated, that the indenture never had been stamped; and this repelled and indeed absolutely precluded all presumption in its behalf.

*Silvester* and *Gough*, in support of the rule to quash these orders, insisted; that if there was any sound principle, upon which this hearsay evidence could be supported, it must be that it was the best and

[a] H. 13 G. 3. 1773. Barr. Sett. Cas. 731. and see the *King v. the Inhabitants of Bury*, M. 25 G. 3. 1784. ante 482. and the cases cited and referred to in the case of the *King v. the Inhabitants of the Holy Trinity in Wareham*, H. 22 G. 3. 1782. ante 141.

[b] Tr. 13 and 14 G. 2. 1740. Barr. Sett. Cas. 191.

[c] Tr. 22 and 23 G. 2. 1749. Barr. Sett. Cas. 292. 735.

indeed

indeed the only evidence, that could be resorted to: but that it was not much to the credit of the profession as a science, that there might be found one rule of evidence in *Westminster Hall* and another in the court of Quarter Sessions; and still less so, as had been stated in argument on the other side, one in one court of Quarter Sessions and another in another.

That, if the argument, which had been used with respect to the nonproduction of the articles stated, were admitted, no inquiry could in cases of this description be necessary; unless there existed some public repository, in which the thing sought after might be found: that this doctrine was wild and extravagant: that in the present case it was in proof, that there existed a written agreement to which resort might be had; and that consequently extreme laches was imputable; as it was neither shewn, that this instrument had been lost, or that any inquiry whatsoever had been made after it: that the cases cited of the *King v. East Knoyle* and the *King v. Saint Michael Bath* were not agreeable to [a] modern practice: that, subsequent to the case of *East Knoyle*, this objection was in that of *Saint Helen's* in *Abingdon* insisted upon at the bar; but that the court, as had been shewn on the other side, did not notice it; nor was it necessary to do so, as another objection was stated, upon which the court immediately gave judgment in favour of those who objected: that it would be dangerous, as parties, who found they had an interest in secreting instruments, would suppress them; and it would also be another novelty in legal proceedings, under such circumstances to admit such evidence.

*Willes J.*

The first question is, whether the declarations of a husband to his wife are after his death admissible? They certainly are not so in general. In questions of custom and prescription, it is true they are, though not to prove particular facts. Yet it is insisted, that the usage of courts of Quarter Session allows such evidence to be received there; and the only case cited to this point, that of the *King v. Saint Michael Bath*, seems to confirm that proposition. But the case, which has been stated as analogous to the present, and another exception to the rule, does not apply. The declarations of a bankrupt are not admitted to prove the fact of his keeping house or absconding, to prove the

1785.  
 REX  
 v.  
 The Inhabi-  
 tants of  
 ST. SEPUL-  
 CHR'S.

[a] See 3 Burn's Jus. edit. 1793. p. 436.

1785.  
 Rex  
 v.  
 The Inhabi-  
 tants of  
 St. Sepul-  
 chre.

act of bankruptcy; but, when this fact is proved, are received to show, *quo animo* he did such things. The orders might perhaps be supported on this ground; but it is not necessary to give any express opinion on that head, as the case is so weak on the other point.

On the second question, whether, when a deed is shewn to exist, parole evidence can be given of the subject matter of it, though no inquiry has been made respecting it, I am of opinion, it cannot. The parties should have used due diligence to come at the articles, and have inquired of the widow or administrator to intitle themselves to do so. What is said by *Aston J.* in the case of *Saint Michael in Bath*, as reported in Mr. *Bott's* appendix [a], seems in point.

*Ashburst J.*

The gross neglect of the parties, to make the usual and obvious inquiries to intitle them to the advantage of the parole evidence in this case, makes it unnecessary for me, though I should have no difficulty in doing it, to pronounce here upon the admissibility of the husband's declarations. So far from making it the best evidence, and using due diligence, they have done nothing.

*Buller J.*

The first part of this question appears to me to be perfectly clear, upon the grounds on which it has been put. The instance of a bankrupt's declarations does not apply. He is considered as being criminal; and what he says, at the time he is proved to have committed the act, is evidence against him.

As to the second part of the question, there ought, and might, have been inquiries made in different places; for there ought to have been two parts of the articles; because each party is bound: but inquiry is made nowhere; not even whether the pauper had left any papers; and every inquiry ought to be made.

Rule absolute, and  
 Order of Sessions quashed.  
 Lord *Mansfield* was absent.

---

[a] P. 394.

The King v. Cottrell.

UNDER the statute 5 Ann. c. 14. for the better preservation of the game, the defendant was convicted for keeping and using a grey-hound to kill and destroy the game.

This conviction, upon the information of *James Tull*, late of the parish of *Baghurst*, but now residing in the parish of *Tadley* in the county of *Hants* labourer, before *Thomas Obourn*, clerk, one of the justices, &c. stated, that *Henry Cottrell* of *Tadley* aforesaid in the county aforesaid husbandman, not then having lands and tenements nor any other estate of inheritance in his own or his wife's right of the clear yearly value of 100*l.*, nor for term of life, nor any lease or leases of 99 years or for any longer term of the clear yearly value of 150*l.*, nor then being son and heir apparent to an esquire nor of any other person of higher degree, nor the owner nor keeper of any forest park chase or warren, nor gamekeeper to any lord or lady of a manor, did, on, &c. at the parish, &c. in a coppice belonging to *Witber Bramstone* Esquire keep and use two dogs called lurchers to kill and destroy the game; and that on &c. at the parish &c. at a place called *Tadley Common* he the said *Henry Cottrell*, not then having &c. did keep and use two dogs called lurchers, and did kill a hare against &c.

It is no objection to the testimony of an inhabitant of a parish, who is liable to be rated but not rated in fact, that he has an interest in penalties to be recovered by his testimony.

After setting out the summons attendance and plea of the defendant of not guilty, the conviction further stated, that on the 31st day &c. at *Kingsclere* &c. one credible witness, to-wit, *Henry Tull* of *Tadley* aforesaid labourer, cometh before me &c. and upon his oath deposeth, that he is employed by *Thomas Lobb Chute* Esquire, who has a grant of the manor of *Tadley*, to preserve the game, and that he the aforesaid *Henry Cottrell* on the 27th day of *December* aforesaid in the year aforesaid at the parish of *Tadley* aforesaid in the county aforesaid, not then having &c. in a coppice belonging to *Witber Bramstone* Esquire in the said manor of *Tadley* did keep and use two dogs, called lurchers, to kill and destroy the game; and that on the day following, being the 28th day of *December* aforesaid in the year aforesaid, he the said *Henry Cottrell* at the parish of *Tadley* aforesaid in the county aforesaid, not then having &c. did keep and use a certain dog, called a lurcher, to kill and destroy the game; whereupon &c. the aforesaid *Henry Cottrell* on the 31st day of *December* in the year aforesaid at *Kingsclere* aforesaid in the county aforesaid by me the same

1785.  
 REX  
 v.  
 COTTELL.

justice by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, of the offence committed on the 28th day of *December* is convicted, and for his offence aforesaid hath forfeited the sum of 5*l.* to be distributed as the statute aforesaid doth direct. In witness whereof, &c.

*Thomas Obourn.*

Wednesday,  
 June 8.

Upon a rule to shew cause, why this conviction should not be quashed, *Milles* objected, that the witness, on whose testimony the conviction had been founded, was interested upon the subject, and as such incompetent: that it appeared not only that he had the care of the game in the manor; but that he was an inhabitant of the parish; and that, as such, he would be benefited by the distribution of part of the penalty to the poor; inasmuch as he would be eased in the proportion of his assessment to the rate.

*Buller J.*

No: not unless he is an inhabitant paying scot and lot: and this the court cannot presume.

*Milles.* As this is a burthen, which of common right as well as by statute the law throws upon the inhabitants of every parish, the finding, that any one is such, of itself imports a liability, unless the contrary is disclosed by the case. That the course of practice, under many authorities, had become so general, and the law so fully established; that it is recited in the statute [a] 2 Geo. 3., that the legislature by the statute 8 G. 2. c. 19. empowered the prosecutor to sue for the whole penalty, for the very purpose of enabling inhabitants who had otherwise an interest to become witnesses.

*Buller J.*

But not to intitle those, who were before under no disability: and we presume nothing here. 'Tis true that the old cases were as is stated; but the distinction now [b] is, that, where the inhabitant does not actually pay, his mere liability is not that sort of interest, that shall take away his testimony: and this point was so ruled by *Bur-land B.* on [c] the western circuit; and the decision has been universally approved.

*Milles*

[a] c. 19. s. 5.

[b] And it is more fully settled by the case of the King v. Prosser & al. M. 31 G. 3. 1790. 4 Durnf. and East 17.

[c] This was the case of Millington v. Peck, Salisbury Summer Assizes 1774. It was stated to be "trespass for taking the plaintiff's goods: that the defendant justified under a bye law, which required, that all butter, brought for sale to Marlborough market, should be sold



*Milles* then stated that the charge in the information was for hunting with two lurchers, but that in the conviction he was found guilty of hunting only with one; and objected, that the offence, of

1785.

Rex  
v.

COTTRELL.

fold in pounds weighing eighteen ounces each; and directed that all brought for sale of less weight, together with three times its value, should be forfeited for the use of the poor of the parish; and that the plaintiff in his replication denied the existence of this bye law: and thereon issue was joined. *Davy S.* called an inhabitant, as a witness for the defendant, to prove the bye law. *Mansfield* for the plaintiff objected; that he was interested, because his testimony went to increase a fund, to which he is contributory; and so he is incompetent. It was replied, that the witness was no payer, but on the contrary received alms of the parish. *Burland B.* No one can prove a custom, by which he is to be benefited. It has been holden in the case of *Portman v. Ogden*, which came from this circuit, that penalties given to the poor are to be distributed among that species of poor, who receive relief from the parish. This custom tends to reduce the rates, to which inhabitants, pay-masters, are contributory; and therefore the objection applies to such inhabitants, but to such only. The poor themselves are witnesses, because at all events they must be maintained; and it is indifferent to them by whom."

This case as above stated, does not appear to me to apply to the point in question: the witness, being in the receipt of alms, could not by any presumption be taken to be one liable to pay. In a note, which I have seen, of this case, the fact of the witness being an actual pauper does not appear, and his testimony is stated to have been rejected; but, in the case there referred to, which is reported in *Sayer 179. H. 28 G. 2. 1755.* under the name of *Portman v. Okeden*, and was a case in which the witness was assessed, *Denison J.* gives his judgment in these words. "It has been said, that in the case of *Rex v. Wyatt*, *Pasch. 13 Geo. 2.* it was holden; that an inhabitant of a parish was a competent witness for the parish: But it did not in that case appear, that the inhabitant was assessed to the poor's rate of the parish; and as that did not appear, the court would not intend it."

The case of the *King v. Wyatt* I can only find in *Sessions Cas. vol. 1. fo. 375.*, where it is stated, "that Mr. Fazakerly objected, that the conviction appears not to be founded on a legal evidence; for the person, on whose testimony the conviction is taken, is named to be of the vill of Mothram, where the fact was done, and consequently he hath an interest in the conviction; because one half of the penalty is to go to the poor of the parish; so it is plain he is concerned in point of interest within the meaning of this act; and it is like the case in a suit for tithes in the Exchequer, where if a man is said to be of the parish, his deposition is rejected."

But by the court: There is no weight in this exception.

And Chief Justice said, it is of no moment to say, the witness is an inhabitant of the vill, where the fact was done; for he might be a servant, and then his evidence will support the conviction below.

This book is certainly of very little authority; but that *Denison J.* in *Portman v. Ogden* gave judgment as above, is confirmed by the authority of a MS. note of a late noble lord of high rank in the profession upon subjects of a similar nature with those in the present volume; and as it should seem, the above case of *Wyatt* was also the authority referred to. "Pratt for the plaintiff, the *King v. Miller*, *H. 7 G. 2.* A conviction on the 3d of K. Wm. c. 10. for killing deer was removed hither, and one objection was; that half the penalty of 30*l.* was given to the poor of the parish, &c. and the witness, proving the fact, was a parishioner. The same objection was taken in the *King v. Nicholas*, *M. 19 G. 2.*, but was overruled in both cases. I don't cite these cases as in point, because it did not appear that the witness was assessed to the poor rate; but the court I apprehend leaned against the objection."

*Denison J.* "All the court determined in those cases was, that they could not intend the evidence had any interest; because it did not appear, that he was rated to the poor. So in the *King v. Wyld*, *13 G. 1.*, cited in the *King v. Beccles*, it was laid to be in Wandsworth in Yorkshire, and that the witness was a parishioner, but not that he was rated."

1785. which he was convicted, was a different offence from that which  
 ~~~~~  
 REX appeared in the charge, and which was the only ground of the con-
 v. viction; neither could the defendant have been prepared to answer
 COTTRELL. a new and unknown charge.

Buller J.

It is the same offence, though not to the same extent; and the time, at which the conviction states the offence to have been committed, corresponds with the time mentioned in the information.

Willes J. concurring,

Rule discharged.

— Lord Mansfield and Ashurst J. were absent.

Rex v. Moorhouse.

The service upon the party of an order, which is charged to have been disobeyed, must be directly and pointedly alleged, or the indictment cannot be supported.

THIS was an indictment against the defendant for disobeying an order of two justices.

The indictment stated, that the Rev. *Henry Wood D. D.* and *William Walker Esquire*, two of his Majesty's justices of the peace for the West Riding of the county of *York &c.* did, by an order under their hands and seals dated the 11th of *September 1784*, order the churchwardens and overseers of the poor of the township of *Cleckbeaton* in the said Riding to pay unto *Sarah Firth* of the township of *Cleckbeaton* aforesaid, one shilling and sixpence weekly and every week for and towards the support and maintenance of her the said *Sarah Firth* and her bastard child, until such time as they should be otherwise ordered according to law to forbear the said allowance; and the jurors did further present, that *Thomas Moorhouse* late of *Cleckbeaton* aforesaid, clothier, the 28th day of *September* in the 24th year of the reign of the said Lord the now King *George* the 3d, (the said *Thomas Moorhouse* then and still being churchwarden of the township of *Cleckbeaton* aforesaid,) not regarding the said order nor the authority of the said justices, after the said order was delivered to the said *Thomas Moorhouse*, and after the service thereof, contemptuously, unlawfully and unjustly did refuse to give any obedience to the said order, in manifest contempt of the said Lord the King and his laws, in great delay of justice, to the evil example of all others in the like case offending, and against the peace of the said Lord the King, his crown and dignity.

To

To this indictment the defendant demurred; and the prosecutor joined in demurrer.

Fearnley had last term obtained a rule to shew cause, why this indictment, to which the defendant had not then pleaded, should not be quashed: and, upon cause shewn, the rule was discharged, Lord *Mansfield* saying, That the Court would not countenance motions to quash indictments, especially where nice and subtle objections in point of form were made the foundation of them. Where the objection is upon the merits, or where the point is otherwise clear and plain, it is another matter. In other cases they ought not even to be entertained. In the present case, if the objection is considered as sound and substantial, let the defendant demur.

And now *Fearnley*, in support of the demurrer, insisted, that it did not appear on any part of this indictment, that the defendant had been guilty of any offence whatsoever; unless magistrates were authorized to order relief to whomsoever they should think proper; but that the policy and provisions of the legislature had been directed against so lavish and improvident a delegation of power: that the statute of 43 *Eliz.* had authorized them to order maintenance for the poor and impotent; but that, in the interval between that statute and the 9th of *George*, they had so partially exercised, they had so much abused, this power, that by an act of that year c. 7, the legislature thought fit to lay them under restrictions; and, that parishes should not any longer be burthened on "false and frivolous pretences," required, that, previous to relief given, oath shall be made of reasonable cause of application to the parish and their refusal; and that, until summons of the overseers, this power should not be exercised: that, when these requisites are complied with, and the order made, there is no appeal against it at the sessions: that it is conclusive upon the officer, and his refusal to execute it is at the peril of an indictment: that, upon the face of a criminal process, it should therefore be made to appear clearly, that all the necessary preliminaries had been observed: that, if these are stated falsely in the order, the Court will grant an information for the abuse of office: that, if they are not stated, it is not an order warranted by law. That, throughout, every thing appears here to be defective: that it is so with respect to the object, the person intitled to receive relief; for the allegation is, that two justices ordered it, but on behalf of a party, who is not stated to be poor or impotent. That it is equally so with respect to the officer, who is required to give it; for it is not stated that he was overseer, but churchwarden only; and there

1785.

REX

v.

MOORHOUSE.

Saturday,
June 11.

1785.

REX

v.

MOORHOUSE.

there is no averment, that their duties are the same; nor indeed could there well be, as, in the county of *York*, they are several and distinct: that there was not even any averment, that the pauper belonged to the parish: that it was beyond the power of the magistrate to grant, nor was any parish bound to find, regular maintenance for any but settled inhabitants; and that casual poor could receive only occasional supply, and such as was adapted to their immediate necessity. That it was not stated, that the pauper was poor and impotent; and that orders, which are always more favoured than indictments, had, as appears from the case of [a] the *King v. the Inhabitants of Hyworth*, on this ground repeatedly been quashed; neither was it stated, that the money had been demanded.

Law, in support of the indictment, contended; that, the magistrates having jurisdiction upon this subject before under the statute of *Elizabeth*, it was not at all necessary to the validity of the indictment, that it should set out all the additional steps, which the statute of *G.* required them to take, previous to the exercise of their old authority: that these were merely directory instructions with which they must comply, and which the Court would presume they had complied with: that if they did not observe them, they would subject themselves to an information; but that it was not necessary, that this should appear upon the indictment, in order to give a jurisdiction, with which they were invested before: that the restriction was solely as to the mode of executing this authority: that in the case of [b] the *King v. Venables*, it had been adjudged, that it was not necessary to alledge the summons in an indictment: that the Court would presume it; and would intend, that the justices, having jurisdiction, had proceeded regularly: that, with respect to the argument, that, because no appeal would lie against this order, all preliminary steps, necessary to warrant it, ought to appear fully stated, it seemed to be perfectly idle to require, that that should be stated at large, which no court could possibly enter into. That, as to the defendant's being described only as churchwarden, when the duties of the two offices were several and distinct, the statute of 43 *Eliz.* which not only throws the duties of one officer upon the other, but directs that this shall be called by the other's name, by so doing disposes of this objection. That, as to the pauper's not being a

[a] M. 3 G. Str. 10.

[b] Tr. 11 G. 1725. Ld. Raym. 1405.

proper object of relief, the Court would from her description intend, that she was poor and incapable of supporting herself, as well as that the magistrates had not so abused their trust, as to direct this to be extended to a stranger: that she was stated to be an inhabitant; and that as, either in this character or as a casual pauper, the magistrates were empowered to grant an allowance during sickness, the Court would, in support of their authority, intend, that she was under such a visitation. That, as to the objection, that it is not alleged that the money was demanded, it appears, that this was done and more: that it appears, that, after the order was delivered and consequently its contents known, (and it contained nothing more than directions for this payment,) the defendant refused all obedience, "every obedience to the said order:" that this included a refusal of payment, while it was also a defiance and setting at nought of the magistrate's authority: that it was in substance a refusal to pay, at the same time that it made a demand in point of law nugatory, and therefore unnecessary; and that to give a contrary construction here would be to admit an intendment, to give countenance to a subtlety, against the justices; and to deny that the whole included all its parts. That this case differed from that of orders removed by certiorari: that there the inducement, and indeed every thing, must be stated; but that here it was necessary to state that only which, under a clear jurisdiction upon the subject in general, was the exercise of authority, the act awarded to be done: that this indictment was in the nature of an attachment for disobedience of a rule, and need not state all the premises upon which the rule was made; and that it consequently was good, unless it disclosed a want of jurisdiction; as where a justice issues his warrant for slander.

Buller J.

As a penalty is incurred by the overseer for neglect under the statute of [a] *Eliz.*, is this an indictable offence? It has been determined, that an indictment will not lie against an overseer for not accounting.

Law. These are particular provisions in the same clause of the act, and each of them subjects to a forfeiture of twenty shillings, viz. for non-attendance upon monthly meetings and for not accounting. This offence, which is disobedience to the order of a magistrate, is not created by the 43d of *Eliz.* In particular cases it is true, that

1785.

REX

MOORHOUSE.

[a] 43. c. 2. s. 2.

1785.

REX
v.

MOORHOUSE.

statute superadds a penalty ; but the offence is still no less the subject of indictment at common law.

Buller J.

The distinction, as laid down in the case of [a] the *King v. Wright*, Clerk, is rather nice. It is this: if there is a general prohibitory clause in the statute, which creates the offence, an indictment lies, though a penalty is afterwards added therein: but, if the offence is created by the particular clause that gives the penalty, you can only proceed for the penalty.

Ashburst J.

Disobedience to an order of a justice is clearly an indictable offence; and the penalty here is only accumulative.

Lord Mansfield.

If the objection does not hold, that it is a new offence, made subject to a penalty, the question can only be, how far the other objections weigh.

Fearnley in reply insisted; that, by adverting to that part of the indictment only in which the magistrate appeared to be carrying into execution the directions of the act respecting punishment, by looking merely at the act of authority exercised, there were no rational means of judging upon the substance of the charge: that an overseer is not compellable to obey an order, that is, or that, from ought appears, may be, illegal; that it is indispensable to the validity of an indictment, that so much of that, upon which it is founded, should be stated, as to shew that the act done is an offence. That it was impossible, that the Court could intend, that this person was poor and impotent, or a pauper of a particular description: that it would be a direct repeal of the statute; and that no such idea could have existed in the mind of the legislature or the lawyers of the day; or, if such did, no such regulation could have been deemed necessary: that this was a limited jurisdiction under a statute, introduced to impose restraints on the magistracy, who had indulged themselves in a latitude, expressly declared to be unbecoming and fraudulent; and that if the jurisdiction did not appear to be exercised according to the statute, the Court were here more particularly called upon to pronounce their acts unsupported and invalid.

[a] E. 31 G. 2. 1758. 1 Burr. 543. but see the *King v. Robinson*, clerk, Tr. 32 & 33 G. 2. 1759. 2 Burr. 805.

Lord

Lord Mansfield,

We will look into it. The offence is disobedience of the order of a justice; and the question is, whether, if the order is on a subject-matter within the jurisdiction of the justice, the facts, which give the authority to make this order, are necessary to be stated, and appear upon the face of the indictment?

1785.

REX
v.
MOORHOUSE.

And now, *per* Lord Mansfield,

Tuesday,
June 14.

The Court are of opinion, that this indictment is faulty. It does not pointedly allege the service of the order; which is necessary for the purpose of charging the defendant here, where, without it, he is not affected with any knowledge of the demand.

Willes J.

The indictment only sets forth, that *after service* of the order the defendant refused.

Buller J.

This is an essential part of the proof to establish the charge, and ought to have been directly stated. There are no means of trying, or inquiring into the consequences of an order, unless it is shewn to have been properly served upon the party.

Per Curiam,

Judgment for the defendant.

Rex v. Inhabitants of Astley.

TWO justices by an order remove *Catherine Boardman*, natural daughter of *Ellen* now the wife of *John Hulme*, late *Ellen Boardman* single woman, aged two years and upwards, from the township of *Astley* in the county of *Lancaster* to the township of *Little Hulton* in the same county. The Sessions on appeal adjudge the settlement to be in *Astley*, quash the order and state the following case:

There must, in general, be circumstances of fraud to prevent the place of a bastard's birth becoming the place of his settlement.

That the pauper was born a bastard in *Little Hulton* on the 7th of *August* 1782 under the following circumstances; *viz.* that the mother on the 5th of the same month went, as she had several times done before, with the knowledge consent and approbation of the overseers of *Astley*, where her legal settlement was and where she then resided, to find out the father of the child, that she might give intelligence of him to the town: that she told the overseers of *Astley*, two or three days before she was delivered, that she would go to find

1785.

Rex

The Inhabi-
tants of
ASTLEY.

out the father of the child, and they desired she would, if she had opportunity; but that she then thought, she was not within three weeks of her time: that she went to *Radcliffe*, about eight computed miles from *Hulton*, supposing to find the father there, and staid all night; and the next day, while she was at *Radcliffe*, she perceived herself to be ill, and therefore made what haste she could to return home, wishing to get to her own town: she got to *Farnworth* on the 6th of *August* at night, and about two or three o'clock the next morning, being the 7th, she set out for *Astley*, and got to *Little Hulton*, which was the direct road to *Astley*; where, her labour pains increasing, she was furnished with a man and horse at her own request by a person, not the overseer, of *Little Hulton* to carry her forwards to *Astley*; but she had not proceeded more than 30 roods, before her pains were so great, that she was obliged to stop; and was delivered of the pauper in *Little Hulton* in the highway there, and about 100 yards from *Tyldesley with Shackerly*, a township intervening between *Astley* and *Little Hulton*: she and her child were immediately taken to an house in *Little Hulton*, where they were both taken care of by the town, with humanity and tenderness. That there was no fraud on either side.

Saturday,
June 11.

Cockell shewed cause in support of the order of Sessions, and contended, that, though it was a general rule that the place of a bastard's birth was the place of its settlement, yet that this rule admitted of many exceptions; and that the present case, though it might not it in its circumstances be the same as the excepted cases, seemed nevertheless to come within their principle: that, when the child was born, the pauper was on a journey in the service of the parish by the direction of the parish officers of *Astley*; and had she not been so sent out of the way, the burthen must unquestionably have fallen upon them: that there are various instances, in which the mother, though personally absent, has been considered as legally present: as in the case of [a] a bastard born in gaol, or pending an order of removal [b] afterwards quashed, or in transitu [c] under an order of removal: that it is true, that all these cases had gone upon the principle either of fraud or inevitable necessity; but that it had also been so adjudged [d], where the mother, after a removal, secretly

[a] *Elting v. the County of Hereford*, H. 2 G. 1. Sess. Cas. 92.[b] *Westbury v. Coltham*, Tr. 3 Ann. 1 Salk. 121.[c] *Reg. v. Jane Grey*, E. 10 Ann. Conf's Bott. vol. 2. 4.[d] *Landinoboe and Much Birch*, M. 8 G. 1. Str. 476.

of her own accord returned and was delivered in the parish, from whence she had been removed: that, if this case was law, (and, though questioned by the Reporter, it appeared to have been founded upon former decisions,) and if the voluntary act of the mother could create an exception to the rule, and would not against the equity of the case fix the child in the parish in which it was dropped, with how much less reason ought it to do so here, where the mother was at the time the agent of the party, who was to make his advantage of the rule, and of using the letter of the law against its spirit; and where the act of the mother was so far from voluntary that it was, and must be taken to be, little less than compulsory, and compulsory by this very party: that the only principle therefore to be extracted from this authority was, that the burthen must fall there, where, *secundum æquum et bonum*, it ought to fall; and that open acts, proceeding either from a sense of duty, or from her abject situation and want of free agency, should discharge her parish from an obligation, which, it had been adjudged, voluntary and clandestine acts could not remove: that no contradiction or difficulty would arise, if the court were first to look to the settled inhabitancy of the mother, and then inquire, whether her absence on such occasions as these were accompanied with an *animus revertendi*.

Lord Mansfield.

The exceptions cited are cases of fraud [a] or necessity. In all others the birth determines the settlement. The old rule is sound, and the cases upon it well considered; but to adopt that which is proposed, and inquire into the *animus revertendi*, would be to give birth to a new set of cases; and that is reason enough for rejecting it.

Willes, Ashurst, and Buller, Justices, concurring.

Rule absolute and
Order of Sessions quashed.

1785.
Rex.
v.
The Inhabitants of
ASTLEY.

[a] And, as far as respects themselves, the return without a certificate of persons removed is an act of fraud and defiance of the law; and by 13 & 14 Car. 2. c. 12. as well as the vagrant act, subjects them to punishment.

Michaelmas Term

26 Geo. 3. 1785.

Rex v. Inhabitants of East Kennett.

The absence of a servant for nine days under charge of a crime or moral turpitude, though with the privacy of his master and by him supplied with money for the purpose of absconding, is a dissolution of the contract of hiring and service, and is not purged by being again received in the family.

TWO Justices by an order remove *Stephen Clements, Susannah* his wife and their two children from the parish of *East Kennett* in the county of *Wilts* to the parish of *Presbute* in the same county. The Sessions, on appeal, adjudge the settlement to be in *East Kennett*, confirm the order, and state the following case:

The pauper, *Stephen Clements*, being settled at *East Kennett*, at *Midsummer* 1783 hired himself to *Thomas Canning* of *Presbute* to serve till the next *Michaelmas*, at the expiration of which term he hired himself for a year to the same farmer *Canning* for the wages of 7*l.* for the year, and served under that hiring until some time in *May* following; when, hearing there was a warrant out against him to take him up for getting a bastard child, he went to his master and told him he must be off, and asked him for money to go off with: on which the master paid him three guineas and an half, and he ran away leaving some clothes and his threshing tackle; but was taken up two or three days afterwards and obliged to marry the woman. He then after nine days' absence returned to his master's house for the threshing tackle and clothes, which he had left behind; upon which his master said, "where are you going," and pauper answered, "he did not know:" on which the master said, "you may as well work again for me as for any other;" to which the pauper agreed, and continued to work there to the end of the year without any fresh agreement, and at the expiration received, including the three guineas

guineas and an half before paid him, his 7*l.* wages all but half-a-crown, which the master deducted for his absence. The pauper, when he ran away from his master, never thought of going back to him, but considered himself as discharged.

Morris and *Jekyll* shewed cause in support of the order of Sessions; and insisted, that this service could not in sound and just reasoning be said to satisfy either the letter or the spirit of [a] the statute: that, so far from a "continuing and abiding in the same service," the facts of the case manifested a discontinuance and dissolution of the first, and the making of a new, contract within the year: that the act was an explanatory [b] act, and could not be extended by construction: that it was as difficult to mistake in conceiving the intention of the parties as it was in reading the act; and that, if it was their intention to dissolve the contract, the Court could not see it in any other light, than as a dissolution: that the leaving of his clothes at his master's house might under some circumstances be used as an argument, that, though he had disappeared for a short time, he still considered that house as his home; but that the known occasion and precipitancy of his flight, and still more the conversation upon his return and new hiring, put this out of all doubt, and left but one construction open upon the subject: and that the case of [c] the *King v. the Inhabitants of Caverswall*, was directly in point.

That the offence, of which the servant had admitted himself guilty, gave the master a right to discharge him, had been decided in many cases; and they cited those of [d] the *King v. the Inhabitants of Brampton*, [e] the *King v. the Inhabitants of Westmeon*, and [f] the *King v. the Inhabitants of North Cray*: and that it was apparent from the whole circumstances of this transaction, that the intention to exercise this right, and which originated in the avowed moral turpitude of the servant, had been acted upon by the master, and was the principle of his conduct.

Wilson J., *Mingay* and *Le Mesurier*, in support of the rule to quash the order of Sessions, stated the question, to be, whether there had

1785.

Rex

v.

The Inhabitants of
EAST KENNETT.Wednesday,
Nov. 23.

[a] 9 & 10 W. 3. c. 11.

[b] *Rex v. the Inhabitants of Castlechurch*, M. 9 G. 2. 1735. Burr. Settl. Cas. 68. *Rex v. the Inhabitants of Brampton*, H. 17 G. 3. 1777. ante 11. but see the *King v. the Inhabitants of Fillongley* Post.

[c] E. 31 G. 2. 1758. Burr. Settl. Cas. 461.

[d] H. 17 G. 3. 1777. ante 11.

[e] M. 22 G. 3. 1781. ante 129.

[f] H. 25 G. 3. 1785. ante 495.

been

1785.
 ~~~~~  
 REX  
 v.  
 The Inhabi-  
 tants of  
 EAST KEN-  
 NIST.

best service sufficient, and whether the contract had been dissolved? and they contended, that, in the cases last cited, the judgment of the Court had gone, not upon the idea of a dissolution of the contract, but upon the grounds of its never having been perfected; upon the ground, that the servant's absence, in gaol or otherwise, had left the service [a] for the year incomplete: that here, unless the contract was dissolved, there was sufficient service, the year having been served out: that retainers or hirings were ever taken strictly, because they were presumed to prove credit and ability; but that the reverse was the rule in services, which might be favourably construed, and always were so: that therefore, if this was not an absolute discharge from the service, the absence was purged by the subsequent reception; and that it was clear from the servant's conduct at the time, that he had no notion of his having forfeited his situation, and that his service was at an end: that when he went off, he did not ask for his wages, but only for something to enable him to remove, and something for his subsistence during absence: that his intention to remain in his service, if he returned, was manifest: that the parting therefore was conditional only, and that he did return to the same service and completed it: that, had he run away under any circumstances and whatever his conduct, and had been received again, he would have acquired a settlement by continuing to the end of his year; and that nothing less than a dismissal previous to the time of his absenting himself, if the case afforded such opportunity, or a rejection of him upon his return, clearly made out, could afford the least pretence for defeating it. That it had been adjudged in [b] the *King v. the Inhabitants of Wootton St. Lawrence*, even in the case of a servant's absconding for four or five days and an *actual discharge* upon his return and afterwards a refusal to receive him but upon an abatement of wages, that, the service having been completed, the contract was not under these circumstances vacated: that the facts of the case, as reported by Sir James Burrow, correspond with this statement; but that this point was also made, though it was not there noticed, Mr. Wilson affirmed, and read to this effect from his own note of the case.

That, with respect to the case of the *King v. Caverswall*, there was a clear dissolution, an absolute discharge, in consequence of a disagreement; and the servant accordingly received the wages he was

[a] There was no pretence for this argument in the *King v. the Inhabitants of Brampton*.

[b] H. 8 G. 3. 1768, Burr. Settl. Cal. 581.

entitled to; and that here on the contrary there had been no discharge, no disagreement upon which to found it, no payment, at the time the discharge was by inference contended to have taken place, of the whole wages due; and consequently no dissolution.

Lord Mansfield.

All along you have left out of your view of the case the consideration of the two last lines of it.

Wilson J. The apprehension of the pauper cannot, as has been repeatedly adjudged, vary the law.

Ashburst J.

True; but, in a question of intention, it will go very far towards shewing what was the understanding of both parties upon the subject.

Lord Mansfield.

It will not alter the law, but it shews the fact.

This case resolves itself into a mere question of fact: and, upon the only point, the dissolution of the contract, the question is, whether the two men agreed to dissolve it? He, who was to have the benefit under it, asks to be off: for what? It may be, his first object was, that the warrant, out against him, should not reach him. But, had he no way offended, was it possible, that, during an uncertain absence of four months, he could conceive, that his place was to be unsupplied and kept open for his return? And how is this interpreted by his conduct? The facts are, that the warrant does reach him, he makes his peace on that subject, and returns: but is it to his service, does he claim to be restored to, or to continue in his state and condition, as a servant in the family? No such thing: he claims his clothes, he comes to take away the implements of his trade, his threshing tackle, the means by which he is to earn his subsistence elsewhere; declaring he does not know, where that place is: and then the conversation on both sides is decisive evidence of a new contract. Besides the case positively and expressly states, that "he never thought of returning." He never thought then of reassuming this character. There is no doubt.

Willes, Ashburst, and Buller, Justices, concurring,

Rule discharged, and

The Order of Sessions confirmed.

1785.

Rex

v.

The Inhabitants of  
East Ken-  
nett.

1785.

## Rex v. the Inhabitants of North Baslam.

The discharge of a servant before a magistrate, with the consent and at the instance of the servant, cannot be fraudulent.

TWO Justices by an order remove *James Phoker*, his wife and their six children from the parish of *Saltbouse* in the county of *Norfolk* to the parish of *North Baslam* in the same county. The Sessions on appeal confirm the order, and state the following case:

That about 22 years since the pauper, *James Phoker*, let himself for a year to *Robert Colvin* of *North Baslam*, farmer, and duly entered upon and performed that year's service; and then lived another year with the said *Robert Colvin* at *North Baslam*, and received the whole of his wages: that being then a single man he let himself for a year to *Abraham Dufgate* of *East Baslam* in the county aforesaid farmer, and entered upon and continued in his service at *East Baslam* until three days and an half before the expiration of his year's service; when he married a female servant of the said *Abraham Dufgate*, who was then big with child by him the said *James Phoker*: that after his marriage, in order to avoid gaining a settlement in *East Baslam* and wishing to be settled elsewhere, he went with *Abraham Dufgate*, his master, before *Henry Lee Warner* Esquire, a neighbouring Justice, to be by him discharged from his said service; and the said *Henry Lee Warner*, after hearing the said *Abraham Dufgate* and said *James Phoker*, did discharge him from his said service; but whether only verbally or by an order in writing does not appear, as the witness, on being asked this question, could not recollect whether Mr. *Warner* did or did not sign any order: that, said *Henry Lee Warner* Esquire observing that *Phoker* was a likely young man, *Dufgate*, his master, said; he was welcome to settle in his parish, if he pleased: that he paid his year's wages, deducting one shilling and nine pence, being a proportionable share thereof for the three days and an half, which were wanting to complete his year's service: that the said *James Phoker* soon afterwards went to reside at *Saltbouse*, and hath continued there until removed by the said order; but hath not since he left *East Baslam* in manner aforesaid done any act to gain himself a settlement.

*Mingay and Garrow* shewed cause in support of these orders; and insisted, that there was no principle whatsoever, under which it was possible to argue, that a settlement was gained in the parish of *North Bafham*, unless it were the supposition that every thing which passed there, relative to the pauper's discharge, was fraudulent; but that this Court had uniformly said, they would neither infer, or enter into the question of, fraud: and they relied upon the authority of the *King v. the Inhabitants of Preston* H. 4 G. 2., cited in the case of [a] the *King v. the Inhabitants of Castlechurch*.

*Bearcroft and Fitzgerald*, in support of the rule to quash these orders, contended; that if, from the facts disclosed, a plain and clear inference of fraud arose, the Court would enter into that question, although fraud was not expressly and in terms found: that here the very view and object of the whole business was by collusion to defeat the settlement: that the management and contrivance of the parties will not be allowed to alter or vary the operation of the law: that the Court no longer ago than *Saturday* last had said, that the question of fraud is a conclusion of law from facts: that in the case of [b] the *King v. the Inhabitants of Frome Selwood*, long subsequent to that of *Preston*, where, *under a wish of the servant's not to be settled*, the master gave him leave to visit his friends for ten days and then deducted a proportion of his wages for the absence; the Court held, that this was "fraudulent and a mere evasion," and did not defeat the settlement: That, as to the discharge by the magistrate here, it was a nullity: that it had been decided in the case of [c] the *King v. the Inhabitants of Hanbury*, that such a discharge, being an act of jurisdiction, must be by order; and therefore ought to be in writing: and that in the case of [d] the *King v. the Inhabitants of Potter Heigham*, in which the pauper requested to be discharged three days before the expiration of his service, submitted to an abatement of his wages and even where it was expressly stated that he and his master *parted by consent*, yet the Court pronounced a similar judgment in favour of the settlement.

1785.

REX

v.

The Inhabitants of  
NORTH  
BASHAM.  
Wednesday,  
Nov. 23.

[a] M. 9 G. 2. 1735. Burr. Settl. Caf. fo. 69.

[b] Tr. 6 G. 3. 1766. Ib. 565.

[c] Tr. 26 &amp; 27 G. 2. 1753. Burr. Settl. Caf. 322.

[d] Tr. 11 G. 3. 1771. Ib. 690.

1785.

REX

v.  
The Inhabi-  
tants of  
NORTH  
BASHAM.Lord *Mansfield*.

Certainly there was no fraud on the part of the master here. The discharge was before a magistrate ; and people, who mean fraud, do not go there. It was besides with the consent of the master, and at the instance of the servant ; and by him the fraud was committed, if there were any thing like fraud in the case ; for it was then a fraud upon the parish, in which he was at the time settled, and in which, if the fraud succeeded, he would continue a settled inhabitant. It is a solemn act, done with advice and on full consideration by both parties, and unquestionably valid.

*Willes, Ashurst, and Buller*, Justices, concurring,  
Rule discharged, and  
Both Orders affirmed.



---

# APPENDIX.

---

## Michaelmas Term

27 Geo. 3. 1786.

---

Rex v. Inhabitants of Fillongley.

**T**WO Justices by an order remove *Mary Watson*, widow, and her five children from the parish of *Bedworth* in the county of *Warwick* to the parish of *Fillongley* in the same county. The Sessions on appeal confirm the order, and state the following case:

That the pauper, *Mary Watson*, sixteen years ago married *John Watson*, who was born in the parish of *Fillongley*: that the said *John Watson* rented a farm of 40l. a year in the said parish of *Fillongley*, and, about *Lady-day* 1783, being distrained upon for rent, he left the said farm and came to the parish of *Bedworth* with two cows and three sheep, purchased for him by his brother out of the said distress; that about said *Lady-day* 1783 the said *John Watson* took a house and three closes of land at the yearly rent of 8l. in the said parish of *Bedworth*, and lived in the said house and resided on the same for about three years; during which time the rent was paid as follows (to wit) the first half year by the said *John Watson*, the next half year by the said parish of *Fillongley*, the third half year by the said *John Watson*, and the fourth by a distress: that about said *Lady-day* 1783 *Thomas Watson*, in a conversation with his brother, the said *John Watson*, concerning his family and poverty, said, "I am sorry

"I give you a close to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it," creates a tenancy at will; and, if this with other tenements amounts to 10l. a year, they constitute a sufficient taking of a tenement to enable the occupier to gain a settlement under 13 & 14 Car. 2. c. 12.

for

1786.  
 Rex  
 v.  
 The Inhabi-  
 tants of  
 FILLONG-  
 LEY.

for your family, and therefore, *I'll give you a close* in the parish of *Astley* (an adjoining parish to that of *Bedworth*) containing about four acres, *to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it:* and the said *John Watson* enjoyed the said close, which was of the yearly value of 2l. 10s., for three years; *during which time the said Thomas, his brother, paid not only the land-tax, but was rated and paid the poor's rates, for the same: that all the tillage was done by the horses and servants of the said Thomas Watson, at whose expence and by whose servants the harvest was got in:* that, during one year the said *John Watson* so enjoyed the said close, part thereof was sown with wheat of the said *John Watson*, procured by the gleanings of his children and family; and in the last year the said part of the said close was sown with the corn of the said *Thomas Watson*; at whose expence the crops of the said close were drawn to and delivered at the house of the said *John Watson* in the said parish of *Bedworth*: *that during the said three years the cattle of the said Thomas Watson were never put into the said close, except for the purpose of plowing and sowing the land and gathering the crops; but that the cattle of the said John Watson were upon the said close, during the time he so enjoyed the same.*

Wednesday,  
 Nov. 22.

*Mingay, Baldwin and Gough* shewed cause in support of these orders; and contended, that the two Courts below had put the true construction upon the Acts of Parliament: that the occupation of the pauper was not such, as would satisfy either the letter or the spirit [a] of them: that it was nothing like *a coming to settle* upon a tenement of the yearly value of ten pounds: that a settling imported something like duration and establishment, something of one's own and in one's own power: that this was no settling or taking, but the mere acceptance of alms; of a situation, the pauper's interest in which was, by the express terms of the holding, defeasible at a moment's warning: that the possession of an annuity would not entitle to a settlement; and that this was no more than pensioning the pauper in a mode, that was most likely to prove a spur to his industry; but that, being utterly unable himself to cultivate part of his tenement and another having actually plowed, harvested, been charged to and paid all the public and parochial burthens, it was impossible, that at any moment the pauper could derive *credit* from such a holding; and that such *credit* by reference to the statute, 9 and 10

[a] St. 13 & 14 Car. 2. c. 12. & 9 & 10 W. 3. c. 11.

*W. 3.* was the very principle, upon which the law has uniformly been interpreted; and that statute required, that a lease should *really* and *bonâ fide* be taken [a]: that, if no inference of credit could justly arise from a situation so dependent and beggarly, ability was negatived expressly in every part of the case: that most of the cases say, the pauper must have ability to stock: that in the case of [b] *South Sydenham* and *Lamerton*, relied upon on the other side, there was a taking; but that this was not in the character of tenant, was not a holding of the thing itself, or any otherwise a holding, than as a bailiff, or manager, holds: and that it was only a gift of the produce, the taking or renting of which would not give a settlement. That to look at consequences, any farmer, if he rented ten pounds a year in an adjoining parish, by giving forty days' occupation of this sort under colour of benevolence, might without any risk throw the burthen of the support of any labourer of his and a numerous family upon such adjoining parish.

*Bearcroft* and *Willis*, in support of the rule to quash these orders, insisted, that no inconvenience could arise from a confirmation in this case of those maxims, which they conceived to be established law; for that fraud, so far from being stated, was not even imputed: that the transaction was *bonâ fide*, and arose from the motives stated on the other side; pure benevolence, and not trick or management of any kind: for that, if such had been the aim, a colourable rent or a taking for some part of the year would probably have been shewn.

That the act of *Car. 2.* gave the right in question to persons coming to settle upon a tenement worth ten pounds a year: that therefore, the residence of the pauper not being disputed, the words of *Parker Ch. J.* in the case of *South Sydenham* and *Lamerton* directly applied to the present. "If a man should out of *kindness* settle another in a tenement of 10*l. per ann.* value, reserving no rent [c], yet

1786.

REX  
v.  
The Inhabitants of  
FILLONG-  
LEY.

[a] There has certainly been some difference of opinion on this subject, but the weight of authority seems to be the other way. In the case of the *R. v. the Inhabitants of Duns Tew*, Tr. 29 & 30 G. 2. 1756, where these statutes were much discussed and judgment after much consideration given, Denison J. says "The words are a parliamentary exposition of what is meant by *coming to settle*, in the case of a man who is not the owner." But Foster and Wilmot, Justices, held otherwise. Foster J. "The words of the statute, respecting certificate persons taking a lease, I don't consider as explaining the st. of *Car. 2.*; but as introducing a new description, in which they might require what qualifications they pleased." Wilmot J. "I think that under this statute there is no necessity for a contract, as under that of *K. William*, where the terms of the act require it." MS.

[b] Tr. 3 G. 2. Sur. 57. fol. 81. 1 Sess. Cas. 122. 10 Mod. 388.

[c] Sur. 57.

that

1786.  
 ~~~~~  
 REX
 v.
 The Inhabi-
 tants of
 FILLONG
 LEY.

that will not alter the case:" that the pauper, being entrusted with 10*l.* a year and not likely to become chargeable, was irremovable; and consequently gained a settlement: that his residence upon this property shewed him not to be one of that description of persons, who were the objects of removal under the act; which was levelled only at those, who were in a state of vagrancy: neither could it be denied, that there had been a demise to him and an actual occupation for a long period; that his own cattle depastured there, and his brother's never did; and that his possession was so unquestionable, that, except his brother, he could maintain trespass against all the world: that, if the pauper could obtain this situation, it was perfectly immaterial, who paid the rent or was answerable to the landlord; or whether any rent, rates or taxes, were paid or not: but that in respect of his occupancy, he was liable, if called upon, to answer every other demand, but that of rent.

That with respect to personal *ability*, that does not appear to have at any time been made the test: that, in [*a*] the *Windmill* case, giving security for the rent, and borrowing money to stock the tenement, is adjudged to make no difference: that it was there said by *Page J.*, that the visible credit is the grand point: and that, even as to *credit*, if the thing, with which the pauper is entrusted, be worth ten pounds a year, it is immaterial what sum is demandable out of it at the end of the year: that in the case of [*b*] the *King v. the Inhabitants of Bilsdale Kirkham* the rent, which the pauper was liable to pay, was only 4*l.* 1*s.*, and in that [*c*] of *St. Matthew's Bethnal Green* only 4*l.*; and yet that in each the pauper acquired a settlement: that, if *part* of the sum need not be demandable either of the pauper or of his security, the principle must be the same with respect to the *whole*; and therefore that it cannot be alone the credit, arising from the pauper's pledging himself for the payment of any certain sum; but, as was said by *Foster J.* in the case of [*d*] the *King v. the Inhabitants of Duns Tew*, the credit given by the legislature to a man able to stock a tenement of the annual value of ten pounds, that gives the right in question.

Ashburst J.

In all cases upon the law of settlement it is safest to adhere to the words of the statute; and upon the terms of it in the present case nothing can be more clear. The words are that persons "*coming to*

[*a*] *Rex v. the Inhabitants of Butley*, Tr. 10 & 11 G. 2. 1737. Burr. Settl. Cas. 107.

[*b*] E. 16 G. 3. 1776. Burr. Settl. Cas. 828.

[*c*] H. 7 G. 3. 1767. Ib. 574.

[*d*] Tr. 29 & 30 G. 2. 1756. Ib. 400.

settle

settle in any tenement under the value of ten pounds are removable. Here is nothing said about ability. The mere relation of landlord and tenant and the rights and remedies annexed to either of these characters do not decide upon the question of settlement. But, if ability ought to be taken into consideration, under the authority cited from *Strange*, to have sufficient credit to be entrusted with a tenement of 10*l.* value *per ann.*, though from motives of benevolence only or charity, negatives the presumption of your becoming chargeable to the parish you inhabit; and shews, that you do not fall under the description or are of that class of people, against whose intrusions provision has been made by this statute: but it is not so much the credit which a pauper derives from a contract for a tenement of the annual amount of ten pounds, as in itself shewing that he is not likely to become chargeable, as it is the credit, or rather right, which the legislature gives or throws upon a man who gets *bonâ fide* into possession [a] of such a tenement, that makes him a settled inhabitant. Such a tenure entitles such a person to be undisturbed in his possession and in forty days to acquire a settlement.

Buller J.

I entirely assent to the policy and wisdom of the maxim, which says, in these cases we should adhere to the letter. To have never departed from it would have prevented much inconvenience and litigation; and the words are here plain and clear.

No doubt the question of fraud is open in every case: but that is a question which properly comes before another jurisdiction, and not that of this Court. It is competent to the Justices at Sessions to adjudge it in all cases; if they do not, in ordinary cases we cannot.

As to *ability*, this Court cannot control the plain words of the act; and whatever may have fallen in general terms from the Court in any case must be taken as referable to the particular facts of that case; and how *credit*, derived from a contract for rent may affect the public, whatever is the case between the parties, seems in the case of *South Sydenham* and *Lamerton* to have depended upon the

[a] And so Denison J. in the case of *Duns Tew*. "The act is carefully worded. It speaks of persons *coming to settle*. This may be two ways: as being the owner, or as a person renting or getting into possession by way of contract, amounting to a lease." MS.

1786.
Rex
v.
The Inhabi-
tants of
Filling-
ley.

1786.

Rex

v.

The Inhabi-
tants of
HILLONG-
LEY.

circumstances and extent of that contract, and to have been applied to cases where the taking was more than 10% a year.

It has also been said, that the pauper never had the tenement: but it is impossible for us to say so here, where the Justices state, how he had it; viz. under an agreement, which made him tenant at will. And what was to become of the field, after the pauper had sown it? It is clear that, as tenant at will (and it is quite immaterial in what way he obtained the seed) he must have taken the growing crop. This is therefore a sufficient holding within the statute to give a settlement.

Rule absolute, and

Both Orders quashed.

Lord Mansfield was absent.

A

T A B L E

OF THE

P R I N C I P A L M A T T E R S.

A.

ABANDONMENT.

1. **N**INE or ten years residence of a child by the direction of his father in a friend's house for the purpose of support, is not, if he occasionally visits his father's house as his home, such an absence, as will, upon the principle of abandonment, be considered an emancipation, and thereby prevent his following his father's settlement. The age of nurture has no relation to the doctrine of emancipation. *R. v. Inhabitants of Tottington Lower End. Page 284*
2. *Vide* CERTIFICATE, No. 2, & 3.

ABATEMENT.

1. Upon a refusal by the master's wife to receive a hired servant who had been prevented from entering into the service for the first month by illness, and the servant's mother saying in his presence, that the *quantum* of wages should be left to the master and mistress, if any abatement is made in consequence, it is no settlement. *R. v. Inhabitants of Wintersett. 298*

ABILITY.

1. *Vide* RATEABILITY, No. 1.

ABSCONDING.

1. The absence of a servant for nine days under charge of a crime or moral turpitude, though with the privity of his master, and by him supplied with money for the purpose of absconding,

is a dissolution of the contract of hiring and service, and is not purged by being again received in the family. *R. v. Inhabitants of East Kennett. Page 562*

ABSENCE.

1. *Vide* SERVICE, No. 2.
2. *Vide* ABANDONMENT, No. 1.
3. Absence at any period of the service is purged by being received again. *R. v. Inhabitants of Wintersett. 298*
4. An agreement made part of a hiring from Michaelmas to Michaelmas, that the servant is to go into the service three days after Michaelmas, is an absence with leave; a dispensation and not an exception from the original contract. *R. v. Inhabitants of Grendon Underwood. 359*
5. If by the servant's default, he does not serve the whole year, he gains no settlement; whether the discharge or absence be immediately before the expiration of the year, or at a more distant period. *R. v. Inhabitants of North Cray. 495*

ABSENCE purged.

1. *Vide* ABSCONDING, No. 1.

ACCIDENT.

1. *Vide* SERVICE, No. 5. CASUAL POOR, No. 1.

ACCOUNTS.

1. *Vide* VESTRY, No. 1.

ACQUIESCENCE.

1. *Vide* APPEAL, No. 2.

ADDITION.

1. *Vide* WIFE, No. 4.

ADJUDICATION.

1. Justices must adjudge a bastard to have been born in the parish charged by their order. *Rex v. Stanley.* Page 172
2. Whether the character in which a party claims a penalty is necessary to be repeated in the adjudication, or whether such repetition may be considered as surplusage only. *R. v. Green.* 391

ADMINISTRATION.

1. Without administration, a person solely intitled to it, but in whom the whole interest does not vest for his own use, cannot by residence acquire a settlement. *R. v. Inhabitants of North Curry.* 137
2. *Vide* NEXT OF KIN, No. 1.

ADMISSIBILITY.

1. *Vide* WITNESS, No. 1.

ADULT.

1. *Vide* EMANCIPATION, No. 3.

AGREEMENT.

1. *Vide* APPRENTICE, No. 2.

AGREEMENT, *New.*

1. *Vide* HIRING AND SERVICE, No. 7.

ALLEGATION.

1. *Vide* INDICTMENT, No. 2. QUASHING, No. 1. INDICTMENT, No. 4, & 5.

ALMSHOUSE.

1. *Vide* RATEABILITY, No. 3.

APPEAL.

1. An appeal does not generally lie by a parish against a vagrant pass. Whether it does in the case of a foreigner sent under a false examination is undecided. *R. v. Inhabitants of St. Lawrence Jewry, London.* Page 18
2. An order unappealed from is conclusive. *R. v. Inhabitants of Hinworth.* 42. and *R. v. Inhabitants of Swallowcliff.* 248
3. The justices at sessions have a concurrent jurisdiction with a justice within the parish, or of the neighbourhood, in making orders for the relief of the poor, and no appeal lies against any such order. *R. v. Inhabitants of North Shields.* 68
4. The sessions are bound to receive an appeal to an order of removal, although no notice has been given. *R. v. Inhabitants of Huntingdonshire.* 283
5. The provisions of the *st. 17 G. 2. c. 38. s. 4.* so far repeal the *st. 43 Eliz. c. 2.* as to limit the appeal against the poor's rate to the next sessions. *R. v. Cooke & al.* 464
6. *Vide* ORDER, No. 1.
7. *Vide* WIFE, No. 4.
8. An appeal to the poor's rate must be at the sessions next after notice of a gravamen having arisen; unless the overseer refuses to shew the rates: and publication of the rates is such notice. *R. v. Inhabitants of Micklefield.* 507

APPRENTICE.

1. If an apprentice is bound, it is not necessary to the validity of his indenture that the master should sign a counterpart. *R. v. Inhabitants of Fleet.* 31
2. Where a master receives money of an apprentice of full age to vacate his indentures, the relation is dissolved, though the indentures remain uncanceled. *R. v. Justices of Devonshire.* 32
3. Apprentice, voluntarily continuing with his master's executor, and assigned with his own consent, gains settlement by residing forty days under such assignment. *R. v. Inhabitants of Stockland.* 60
4. The express consent by parole of a first master to a service with a second, is, for the purpose of a settlement, a legal assignment of an apprentice. *R. v. Inhabitants of Langham.* 126
5. In-

A TABLE OF THE PRINCIPAL MATTERS.

577.

5. Infant parish apprentice and his master cannot by themselves vacate their indentures. *Page 126.*
6. Justices may appoint apprentices at any age beyond that of nurture, except perhaps in cases of husbandry. *R. v. Saltren, Esq.* 444
7. *Vide EXECUTION, No. 1.*
8. Upon a general leave given by his original master to an apprentice to go and work, wherever he pleases, the knowledge and approbation of any particular services, though such knowledge does not reach the master till after the contract for such service is made, makes such a service a service under the indentures. *R. v. Inhabitants of Bradninch.* 461
9. Giving a character to an apprentice is a constructive assent to his service with the party applying for it. *R. v. Inhabitants of St. Mary, Lambeth.* 533

APPRENTICESHIP.

1. *Vide HIRING, No. 5.* CONVERTIBILITY, No. 1. CONTRACT, No. 2.

APPROBATION.

1. *Vide APPRENTICE, No. 8.*

ARREST.

1. *Vide FELONY, No. 3.*

ARSON.

1. Arson is an injury only to the actual possession. and must be so laid. *R. v. Pedley.* 218
2. *Idem. R. v. Schofield.* 397

ARTIFICER.

1. Artificer in his Majesty's service, if he is rated by the parish to the land-tax, and pays, gains a settlement. *R. v. Inhabitants of St. Mary, Whitechapel.* 24

ASSENT.

1. *Vide APPRENTICE, No. 9.*

ASSESSMENT.

1. *Vide RATE, No. 7.*

ASSIGNMENT.

1. *Vide APPRENTICE, No. 3, & 4.* TENANT AT WILL, No. 1.

AVERMENT.

1. To say a dog called a greyhound, is a sufficient averment of his being a greyhound. *R. v. Hartley.* *Page 175*
2. *Vide INDICTMENT, No. 4.*

B.

BAIL.

1. Upon an application to bail, the court requires to see the depositions; and will from thence, if they see just cause, without regarding the regularity or irregularity of the commitment, discharge, bail, or detain the prisoner. *R. v. Horner & al.* 295

BASTARD.

1. Bastard living with his mother for nurture, but having a different settlement, must be maintained by the parish in which it is settled. *R. v. Inhabitants of Hemlington.* 6
2. *Vide SERVANT, No. 4.*
3. *Vide ADJUDICATION, No. 1.*
4. With respect to the settlement of bastard children by birth, work-houses seem to be considered as part of that parish, whose property they are; and not of that in which they are locally situated. *R. v. Inhabitants of St. Peter and St. Paul in Bath.* 213
5. It is not necessary to the validity of an order of filiation, that the putative father should be present at the examination of the woman before the two justices. *R. v. Inhabitants of Upton Gray.* 308
6. Illegitimate infants may under *§. 26 G. 2. c. 33.* marry by licence with the consent of their putative father. *R. v. Inhabitants of Edmonton.* 435
7. There must in general be circumstances of fraud to prevent the place of a bastard's birth becoming the place of his settlement. *R. v. Inhabitants of Aftley.* 559

BIRTH.

Vide BASTARD, No. 7.

C.

CATHEDRALS.

1. The sites and areas of ancient cathedrals are extra-parochial. *R. v. Justices of Peterborough.* Page 238

CERTIFICATE.

1. Certificate of a prior date, though not delivered till after the removal of a pauper, is conclusive upon a removal by the parish granting it. *R. v. Inhabitants of Buckingham.* 64
2. In deciding whether a certificate is abandoned, the court will regard the intention of the parties, together with the other circumstances. What particular length of time amounts to an abandonment is not determined. *R. v. Inhabitants of Frampton upon Severn.* 97
3. Pauper voluntarily leaving the parish, to which she was certificated, and after an absence of seven years, during which she is several times hired and serves for a year in the parish certifying, voluntarily returning to the same house in the parish certificated to, and to a branch of the same family with whom she had before lived under the certificate, does not thereby vacate her certificate. *R. v. Inhabitants of Keel.* 144
4. The construction of the certificate act is not restrained by the preamble; but it extends to all classes and descriptions of poor. *R. v. Inhabitants of St. Peter and St. Paul in Bath.* 213
5. A petty constable, sworn into office and executing it by deputy, thereby discharges a certificate and acquires a settlement. *R. v. Inhabitants of Hope Mansell.* 252
6. A pauper, who obtains a certificate before he has completed forty days residence upon a tenement of the yearly value of 10l., avoids such certificate by completing such residence, and acquires a settlement. *R. v. Inhabitants of Findern.* 426
7. Obtaining a second certificate seems to be a discharge of the former. The certificate of a minor, included in that of his father, is under circumstances avoided by a removal of his

father, stating the true number of his children; though the minor be not actually sent under the order, and the removal is from a third parish, and not the parish certificated to. *R. v. Inhabitants of Birdham.* Page 500

CERTIORARI.

1. *Vide* ORDER OF REMOVAL, No. 3.
2. Return to a certiorari need not be under seal. *R. v. Pickersill & al.* 297
3. A certiorari does not lie for other than judicial acts. *R. v. E. P. Lloyd, Esq.* 309

CHAPEL.

1. *Vide* RATEABILITY, No. 4.

CHARACTER.

1. *Vide* APPRENTICE, No. 9.

CHARGE.

1. *Vide* CONVICTION, No. 3.

CIRCUMSTANCES.

1. *Vide* WAGES, No. 3.

CLERGY.

1. *Vide* GAME, No. 1.

COLLEGES.

1. The sites and areas of ancient colleges are extra-parochial. *R. v. Justices of Peterborough.* 238

COMMENCEMENT.

1. *Vide* ABATEMENT, No. 1. ABSENCE, No. 4.

COMMITMENT.

1. Warrant of commitment, setting out the character in which the prisoner is committed in the disjunctive, is bad. *R. v. Evered & al.* 26

COMMITMENT ACT.

1. *Vide* INCORRIGIBLE ROGERS, No. 1.

COMPOSITION.

1. *Vide* RATEABILITY, No. 5.

CONSENT.

1. *Vide* APPRENTICE, No. 2.
 2. The consent of parties, that the sessions shall delegate their authority, concludes such parties, and gives validity to all acts of the sessions, in consequence of such consent. *R. v. Justices of Northampton.* Page 30
 3. The consent of a servant given in express terms to the dissolution of his contract, unless fraud is stated, must be conclusive. *R. v. Inhabitants of Seagrave.* 247
 4. *Vide* APPRENTICE, No. 8, & 9. DISCHARGE, No. 5.

CONSIDERATION.

1. *Vide* PURCHASE, No. 1.

CONSPIRACY.

1. *Vide* INFORMATION, No. 1.

CONSTABLE.

1. *Vide* FELONY, No. 3. CERTIFICATE, No. 5.

CONTRACT.

1. The intention of the parties at the time must decide whether a contract be in the nature of an apprenticeship or of an hiring and service. They are not convertible. *R. v. Inhabitants of Little Bolton.* 367
 2. *Idem.* *R. v. Inhabitants of Highnam.* 491

CONTRACT, Duration of.

1. *Vide* GENERAL HIRING, No. 2.

CONVERTIBILITY.

1. Though a written agreement does not operate to retain as an apprentice, yet if the contract was entered into with that view, and is a fraud upon the revenue, it will not be convertible into a hiring and service, and in that respect intitle to a settlement. *R. v. Inhabitants of Highnam.* 491

2. *Vide* CONTRACT, No. 1, & 2.

CONVICTION.

1. The authority given by the *stat. 43 Eliz. c. 7.* to convict before any justice &c. of a county, city, or town corporate, where the offence shall be committed, is constructively given to any justice &c. of any place, district, or liberty in any county where &c. *R. v. Stevens.* Page 302
 2. *Vide* ESQUIRE, No. 1.
 3. Whether the whole allegation in a conviction can be considered as the charge, or whether the charge and evidence are distinct? Whether either the charge or evidence are sufficient, if set out by inference only and argumentatively, and not directly and positively? *R. v. Green.* 391
 4. Where the Legislature in its language comprehends divers offences under general terms, it is not enough to follow in a conviction the words of the statute, but it is necessary to state what particular act prohibited has been committed. *R. v. James.* 458
 5. *Vide* WITNESS, No. 1.

COTTAGE.

1. *Vide* QUARANTINE, No. 1.

COUNTERPART.

1. *Vide* APPRENTICE, No. 1.

COUNTY ELECTION ACT.

1. The act for regulating the right of voting does not, in the form of assessment that it gives, prevent parishes from rating landlords or any other persons by name. *R. v. Inhabitants of Endon, Longdon and Stanley.* 374

COUNTY RATE.

1. *Vide* JURISDICTION, No. 2.

COURT, Inferior.

1. Unless facts are stated to make the contrary appear, the court always presumes in favour of the acts of inferior jurisdictions. *R. v. Morgan.* 156

A TABLE OF THE PRINCIPAL MATTERS.

CRIME.

1. *Vide* Absconding, No. 1.

CUSTOM OF COUNTY.

1. The legal import of a contract, the terms of which appear, is a conclusion of law without regard to the apprehension of the parties or the country. *R. v. Inhabitants of Birmingham.* Page 77
2. *Vide* Hiring, No. 2.

D.

DAYS, *last forty.*

1. *Vide* Hiring and Service, No. 6.

DEATH-BED DECLARATIONS.

1. The death-bed declarations of paupers respecting their settlements are evidence; as are also when they are dead, their general declarations. *R. v. Inhabitants of Bury.* 482

DECLARATIONS.

1. Declarations of a husband to his wife respecting his settlement seem, after his death, to be admissible evidence: but if such declaration refer to a written instrument, unless previous inquiry shall have been made after it, they cannot be received in evidence. *R. v. Inhabitants of St. Sepulchre.* 547

DEFAULT.

1. *Vide* Absence, No. 5.

DELEGATION.

1. *Vide* Consent, No. 2.

DEMURRER.

1. *Vide* Indictment, No. 5.

DEPOSITIONS.

1. *Vide* Bail, No. 1.

DEPUTY.

1. *Vide* Vestry, No. 1.

DESCRIPTION.

1. Justices in an order of removal stating themselves to be justices for a "borough or town and parish," describe themselves with sufficient certainty. *R. v. Inhabitants of Andover. P. 373*
2. *Vide* Poor, No. 1.

DESCRIPTION, *General.*

1. *Vide* Conviction, No. 4.

DESCRIPTION, *Particular.*

1. *Vide* Conviction, No. 4.

DETAINER.

1. *Vide* Imprisonment, No. 1.

DETERMINATION.

1. *Vide* Tenant at Will, No. 1.

DISCHARGE.

1. *Vide* Imprisonment, No. 1.
2. Maid servant discharged three weeks before the end of the year for being with child, though her whole wages are paid, gains no settlement. *R. v. Inhabitants of Brompton.* 11
3. Servant, father of a bastard child, may be discharged by his master. *R. v. Inhabitants of Welford.* 57
4. *Vide* Certificate, No. 7.
5. The discharge of a servant before a magistrate, with the consent and at the instance of a servant, cannot be fraudulent. *R. v. Inhabitants of North Bampton.* 566

DISCONTINUANCE.

1. *Vide* Hiring and Service, No. 1.
- SETTLEMENT, No. 1. SERVICE, No. 2.

DISJUNCTIVE.

1. *Vide* Commitment, No. 1.

DISPENSATION.

1. *Vide* HIRING and SERVICE, No. 2. ABSENCE, No. 4.

DISSOLUTION.

1. *Vide* ABSCONDING, No. 1.

DOGS.

1. *Keeping* dogs &c. of the kinds enumerated, is, as well as *using* them, an offence against the game laws; and evidence *prima facie* of the purpose for which they are kept. *R. v. Hartley.* Page 175

E.

EMANCIPATION.

1. *Vide* ABANDONMENT, No. 1.
2. An infant, whose father forms for him such contracts of hiring and service as do not give a settlement, is not, if he performs them, thereby emancipated. *R. v. Inhabitants of Stretton.* 487
3. An infant, sent by her father into the parish workhouse, in consequence of his inability to maintain her, and continuing there after she becomes adult, is not thereby emancipated. *R. v. Inhabitants of Broadbembury.* 498

ENTRY, *Forcible.*

1. *Vide* INDICTMENT, No. 2.

EQUALITY.

1. *Vide* RATE, No. 14.

EQUITABLE INTEREST.

1. *Vide* INSOLVENT, No. 1.
2. Devisee of the residue of real estate, devised in the first instance to trustees to sell and pay debts, has such an equitable interest therein, as will by residence thereon for forty days give a settlement. *R. v. Inhabitants of Wivelingham.* 122.
3. *Vide* GAME, No. 2.

ESQUIRE.

1. Though esquires and persons of higher degree are not, by the express provisions of *stat. 22 & 23 Car. 2. c. 25.* exempted from penalties on breach of the game laws, yet the sons and heirs apparent of persons of higher degree are, as well as those of esquires, expressly exempted from such penalties. *R. v. Uiley.* Page 389

ESTATE.

1. *Vide* ADMINISTRATION, No. 1.

EVIDENCE.

1. *Vide* HIRING, No. 3. DOGS, No. 1. CONVICTION, No. 3. INFORMATION, No. 2. DEATH-BED DECLARATIONS, No. 1: DECLARATIONS, No. 1. WITNESS, No. 1.

EVIDENCE, *Written.*

1. *Vide* DECLARATIONS, No. 1.

EXAMINATION.

1. *Vide* APPEAL, No. 1.

EXCEPTION.

1. *Vide* HIRING, No. 1. ABSENCE, No. 4.

EXCESS OF AUTHORITY.

1. *Vide* INCORRIGIBLE ROGUES, No. 1.

EXECUTION.

1. The person, to whom a parish appoint an apprentice, is concluded by signing the indenture, nor can parole evidence be admitted of any prior informality in such indenture. *R. v. Saltren Esq.* 444

EXEMPTION.

1. A hamlet not having overseers of its own, and never before assessed, if stated to lie within a parish, 4 F

parish, and to pay church rates, is subjected to all parochial taxes. *R. v. Inhabitants of Tamworth.* Page 28

2. *Vide* ESQUIRE, No. 1.

F.

FELONY.

1. Where a man commits a crime which is *malum in se*, the probable consequences whereof are felony, and a felony ensues (as where by setting fire to his own house, he burns his neighbour's) he is guilty of felony. *R. v. Pedley.* 218
2. To obtain property by fraud, and under a preconcerted plan to rob, is felony; but this intent, the *animus furandi*, is a fact to be established by the jury, before the legal consequence can result. *R. v. Homer & al.* 295
3. Where a felony has been actually committed, a constable, or even a private person, acting *bonâ fide*, and in pursuit of the offender upon such information as amounts to a reasonable and probable ground of suspicion, may justify an arrest. *Ledwith v. Catchpole.* 291
4. Taking an active part in company with armed persons, in defiance of the laws of customs and excise, is a capital felony within the *stat.* 19 G. 2. c. 34. *R. v. Franklyn.* 244
5. Where upon an indictment an act is charged to have been committed *feloniously*, and the jury find a verdict of guilty, though the charge, as laid, does not amount to *felony*, yet if it does amount in law to a *misdemeanor*, the court will pronounce judgment as for that offence. *R. v. Scofield.* 397

FILIAATION.

1. *Vide* BASTARD, No. 5.

FISHING ACT.

1. *Vide* CONVICTION, No. 3.

FLEET.

1. *Vide* RATEABILITY, No. 9.

FOREIGNER.

1. *Vide* APPEAL, No. 1.

FRACTION of a Day.

1. Law will not make a fraction of a day. *R. v. Inhabitants of Ellisfield.* Page 4

FRAUD.

1. *Vide* INSOLVENT, No. 1. FELONY, No. 2. CONVERTIBILITY, No. 1. BASTARD, No. 7. DISCHARGE, No. 5.

G.

GAME.

1. A life estate of less than 150l. *per annum*, is not a qualification to kill game. *Lowndes Esq. v. Lewis clerk.* 188
2. An equitable as well as legal estate gives a qualification under the game laws: but the clear value of the necessary estate means the value, clear at least of all mortgages or incumbrances created by the owner, or those under whom he claims. *Webberell Esq. v. Hale.* 230
3. *Vide* ESQUIRE, No. 1.

H.

HABENDUM.

1. Though the limitation in the premises cannot in general be controlled by the *habendum* in a deed, it may be by a subsequent declaration of uses. *R. v. Inhabitants of Ashton Underbill,* and *R. v. Inhabitants of Charlton.* 416

HEDGES, breaking.

1. *Vide* CONVICTION, No. 1.

HIRING.

1. A hiring for the year to work by the piece, with an implied liberty, from the usage of the place, to be absent, where the servant pleases, but not to work, gives a settlement; though the servant has absented himself at different times

- times in the course of the year. *R. v. Inhabitants of Birmingham.* Page 77
2. For the purpose of a settlement, no law or custom will give validity to a hiring, which apparently, and in the very terms of it, is short of a year. *R. v. Inhabitants of Harwood.* 100
3. Slight evidence, uncontradicted, will induce the court to presume a hiring. Hearsay evidence from a wife of the declarations of her husband, living abroad, respecting his settlement, are admissible; when supported by slight circumstances. *R. v. Inhabitants of the Holy Trinity in Wareham.* 141
4. A retrospective hiring will not give a settlement. *R. v. Inhabitants of Hoddeston.* 23
5. An agreement for a year to teach a trade, the pauper being to find himself in necessities, and the master to have half his earnings, if he is not retained *eo nomine* as an apprentice, is a sufficient hiring to give a settlement. *R. v. Inhabitants of Little Bolton.* 367
6. *Vide SLAVE, No. 1.*
7. A boy, living with his uncle several years, and working at his trade for his board, lodging and necessities, does not, without a hiring, gain a settlement. *R. v. Inhabitants of St. Mary Guildford.* 521

HIRING, *Constructive.*

1. A service entered upon in a second year, while in a capacity to acquire a settlement, though without any new contract, and referable only to a former contract entered into when not in a capacity to acquire a settlement, will, if completed, give a settlement, even though such capacity was unknown to both parties at the time the second service or new contract was entered into. *R. v. Inhabitants of Hensingham.* 206

HIRING *for less than a Year.*

1. Hiring from the second day of one year, until the first of another, and service under it gives a settlement. *R. v. Inhabitants of Syderstone cum Bermer.* 19

HIRING, *General.*

1. A general hiring is a hiring for a year. *R. v. Inhabitants of Seaton and Beer.* 440

2. A mere indefinite hiring, without any mention whatsoever of time, which is otherwise a hiring for a year, if accompanied with a reservation of wages weekly, will not be considered as a hiring for a year. *R. v. Inhabitants of Elfluck.* Page 489

HIRING, *New.*

1. *Vide SETTLEMENT, No. 1. CONSTRUCTIVE HIRING, No. 1.*

HIRING AND SERVICE.

1. A settlement may be gained under two hirings within the year, if the discontinuance does not exceed a day; of which the law will not make a fraction. *R. v. Inhabitants of Ellifield.* 4
2. Where the dispensation of a week's service at the end of the year is *bona fide*, though a new service is entered upon, a settlement is acquired by the first service. *R. v. Inhabitants of St. Bartholomew by the Exchange.* 48
3. Services under a hiring a few days before Michaelmas expressly for a year, *i. e.* from Michaelmas to Michaelmas, and under a hiring again to the same master three days after Michaelmas ensuing, though at different wages and for a different service, will connect to give a settlement. *R. v. Inhabitants of Grendon Underwood.* 359
4. Service under a hiring for a year will connect with similar preceding services under any number of hirings from week to week. *R. v. Inhabitants of Bagworth.* 179
5. If there is an inhabitancy under a hiring for a year of forty days at any intervals throughout the year in any number of parishes, wherever the last day's inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and if throughout the year the whole will there amount to forty, in that place the settlement attaches. *R. v. Inhabitants of Iveston.* 288
6. Settlements may be acquired at public places; and when a contract is made, and the year's service entered upon, and also the last forty days of it performed in an extraparochial place, the pauper's settlement is in that vill in which the last of any intermediate forty days have been served under the contract. *R. v. Inhabitants of St. Andrew Holborn.* 403
7. During

7. During a contract as a menial servant for a year, a new agreement to work in the same species of labour by the piece, and find himself lodging as well as all other necessaries (the servant afterwards at times serving in his master's house, and being then lodged and boarded there) does not prevent his gaining a settlement. *R. v. Inhabitants of Alton.* Page 424
8. *Vide* CONVERTIBILITY, No. 1. CONTRACT, No. 2. ABSENCE, No. 5. ABSCONDING, No. 1.

HIRING, *weekly.*

1. *Vide* WAGES, No. 3.

HUSBAND.

1. *Vide* PURCHASE, No. 2. DECLARATION, No. 1.

I.

ILLNESS.

1. A master is bound to support his servant in every period of his sickness. *R. v. Inhabitants of Winterset.* 298
2. *Vide* SERVICE, No. 5.

IMPRISONMENT.

1. A legal detainer for an offence which prevents his completing his service, authorizes a discharge by his master, and prevents his gaining a settlement. *R. v. Inhabitants of Westmeon.* 129

INDENTURE.

1. *Vide* APPRENTICE, No. 1.
2. *Vide* APPRENTICE, No. 2.
3. *Vide* APPRENTICE, No. 4 & 5.
4. The indenture of an apprentice, even if voidable, as made during infancy, cannot be avoided, when he is before a magistrate charged with misbehaviour under that indenture. *R. v. Evered & al.* 26
5. *Vide* EXECUTION, No. 1.

INDICTMENT.

1. Such previous orders, as are the foundation of the magistrate's authority, must be recited, or at least referred to in an indictment for disobedience of such authority. *R. v. White & Ealing, Overseers &c.* Page 183
2. In an indictment for a forcible entry upon the possession of a lessee for years, proof of the force and of such possession is sufficient; although the indictment also allege, that the premises were the freehold of A. and such allegation is not proved. *R. v. Lloyd & al.* 415
3. *Vide* QUASHING, No. 1.
4. If there is a positive averment of disobedience to the order of a court of competent jurisdiction, an indictment is good, without a direct allegation of that, which is the foundation of such jurisdiction; nor can a defendant otherwise avail himself, either at the trial, or elsewhere, but by shewing a want of jurisdiction in the court. *R. v. Mylton.* 536
5. The service upon the party of an order, which is charged to have been disobeyed, must be directly and pointedly alleged, or the indictment cannot be supported. *R. v. Moorhouse.* 554

INEQUALITY.

1. Inequality must appear plainly upon the face of a poor's rate, or the court will not quash it. *R. v. Butler & al.* 93
2. The court will not quash a rate for inequality, because houses and land are rated to the poor in equal proportions. *R. v. Inhabitants of Sandwich.* 105
3. *Vide* RATE, No. 14.

INFANT.

1. *Vide* APPRENTICE, No. 5. INDENTURE, No. 4. BASTARD, No. 6. EMANCIPATION, No. 2 & 3.

INFERENCE.

1. *Vide* CONVICTION, No. 3.

INFERIOR COURTS.

1. Unless facts are stated to make the contrary appear,

A TABLE OF THE PRINCIPAL MATTERS.

585

appear, the court always presume in favor of the acts of inferior jurisdictions. *R. v. Morgan.*
Page 156

INFORMATION.

1. Conspiracy by parish officers and others in low situations and circumstances, to marry a poor woman settled in one parish, to a man settled in another, is not a proper subject for an information. Otherwise, if the defendants are of any situation in life, or of good circumstances. *R. v. Compton & al.* 246
2. In convictions, the necessary facts should be charged in the information, and appear there as well as in the evidence. *R. v. James.* 458

INHABITANCY.

1. The settlement of a servant who has in his annual service been a legal inhabitant for forty days in several parishes, is determined by the last day's legal inhabitancy in any of these parishes. *R. v. Inhabitants of Hulland.* 118

INNS OF COURT.

1. Are extraparochial, and the ancient sites thereof. *R. v. Justices of Peterborough.* 238

INSOLVENT.

1. An insolvent conveying his whole estate to trustees for payment of his debts, and those debts at the time of the hearing of the question, at least, appearing to exceed the value of his estate, cannot by a residence upon such estate acquire a settlement. Much less can it be, if the possession of his estate has been obtained by him collusively or violently. *R. v. Inhabitants of St. Michael in Bath.* 110

INTENDMENT.

1. Where a reason is assigned as the foundation of a judgment, all presumption or intendment that the court went upon better grounds, is there excluded. *R. v. Inhabitants of Upton Gray.* 308

INTENTION OF PARTIES.

1. The intention of the parties at the time must decide, whether a contract be in the nature of an apprenticeship or of a hiring and service. They are not convertible. *R. v. Inhabitants of Little Bolton.* Page 361
2. *Vide FELONY, No. 5. OPINION, No. 1. CONTRACT, No. 1 & 2.*

INTEREST.

1. *Vide WITNESS, No. 1.*

J.

JURISDICTION.

1. *Vide APPEAL, No. 3.*
2. The Sessions have no power to vary the proportions, in which the county rate has usually been assessed on the several parishes. *R. v. Inhabitants of St. Paul Covent Garden.* 158
3. Justices either of the county from which tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders in their respective counties. *R. v. Morgan.* 156
4. To state upon an appeal, that those against whose acts you complain are justices, is so far an admission of their jurisdiction. *R. v. Flisber, and R. v. Towill.* 135
5. Justices have power to stop up roads under the general highway act, in cases only where a new road is set out. *Page Esq. v. Howard.* 228
6. *Vide INCORRIGIBLE ROGUES, No. 1. INDICTMENT, No. 4.*

JUSTICES OF PEACE.

1. *Vide JURISDICTION, No. 3 & 4.*

K.

KNOWLEDGE.

1. *Vide APPRENTICE, No. 8.*

L.

LANDLORD.

1. *Vide* NEXT OF KIN, No. 1.

LANDSALE COLLIERY.

1. A land-sale colliery is within the *Stat.* 13 & 14 *Car.* 2. *c.* 12. a tenement, and will give a settlement: but the court will not take notice of the meaning of such technical and provincial terms, unless it is stated. *R. v. Inhabitants of North Bedburn.* Page 452

LAND-TAX.

1. *Vide* ARTIFICER, No. 1.
 2. A tenant, whose name has once been introduced upon the land-tax rate, though it is taken off in the same year in consequence of his poverty, and at his request, as the tax is a tenant's tax, is to be considered as rated by the parish, if they put no other upon the rate, and gains a settlement; though the landlord had previously been rated. *R. v. Inhabitants of Endon, Longdon, and Stanley.* 374
 3. Where both landlord and tenant's names appear on the rate, it is *prima facie* a rating of the tenant. *R. v. Inhabitants of St. Lawrence, Winchester,* 379. and *R. v. Inhabitants of Mitcham.* 277
 4. If where both are named in the assessment, and the receipt given to the tenant, states that the sum paid was assessed on the landlord, it is a rate upon the landlord, and the tenant gains no settlement. *R. v. St. James, Bury St. Edmunds.* 385

LAW-SUIT.

1. *Vide* OVERSEER, No. 3 & 4.

LEASE.

1. *Vide* PURCHASE, No. 1. TENANT AT WILL, No. 1.

LIABILITY.

1. *Vide* WITNESS, No. 1.

LICENCE.

1. *Vide* BASTARD, No. 6.

M.

MAGISTRATE.

1. *Vide* DISCHARGE, No. 5.

MAINTENANCE.

1. *Vide* BASTARD, No. 1.

MALUM IN SE.

1. *Vide* FELONY, No. 1.

MANDAMUS.

1. *Vide* VILL, No. 1. APPEAL, No. 8. VILL, No. 2.

MARRIAGE.

1. Marriages since the 26 G. 2. in chapels not having chapelries or districts annexed to them, and in which banns are not usually, though they have often been published, are, upon the construction of that statute void: and no settlement can be gained under them. *R. v. Inhabitants of Northfield.* Page 115
 2. *Vide* INFORMATION, No. 1. PURCHASE, No. 2.

MARRIAGE ACT.

1. *Vide* BASTARD, No. 6.

MASTER.

1. *Vide* APPRENTICE, No. 1. CASUAL POOR, No. 1.

MEDICINE.

1. *Vide* CASUAL POOR, No. 1.

MINOR.

1. *Vide* CERTIFICATE, No. 7.

MISDEMEANOR.

1. *Vide* FELONY, No. 5.

A TABLE OF THE PRINCIPAL MATTERS.

587

MORAL TURPITUDE.

1. *Vide* ABSCONDING, No. 1.

N.

NAMES OF PARTIES.

1. *Vide* POOR, No. 1.

NATURAL LOVE AND AFFECTION.

1. *Vide* PURCHASE, No. 2.

NEXT OF KIN.

1. Pauper entitled as one of the representatives of an intestate to part of a leasehold estate, occupied by a tenant, and in the actual enjoyment of his proportion of the rents, does not, by paying upon demand by the overseer a poor rate made upon the occupier, acquire a settlement. *R. v. Inhabitants of Chew Magnon.* Page 365

NOTICE.

1. *Vide* RATE, No. 4. APPEAL, No. 4 & 8.

NURTURE.

1. *Vide* BASTARD, No. 1. ABANDONMENT, No. 1.

O.

OCCUPIER.

1. *Vide* NEXT OF KIN, No. 1. RATEABILITY, No. 9.

OPINION.

1. The understanding or opinion of master or servant as to any obligation, which in point of law they may be subject to, can be of no weight. *R. v. Inhabitants of Seaton and Beer.* 440

ORDER.

1. An order unappealed from, is conclusive. *R. v. Inhabitants of Ealing.* Page 472
2. *Vide* INDICTMENT, No. 5.

ORDER (*Disobedience of*).

1. *Vide* INDICTMENT, No. 5.

ORDER of *Justices*.

1. Removed by *certiorari* in due time may be quashed for objections on the face of it, without a previous appeal to the Sessions. *R. v. Stanley.* 172

ORDER of *Removal*.

1. *Vide* APPEAL, No. 3.
2. Order of removal to a place that does not maintain its own poor separately, is a mere nullity. *R. v. Inhabitants of Swadcliffe.* 248
3. An order of removal need not state an examination or summons of the pauper. *R. v. Inhabitants of Bagworth.* 179

ORDER (*Service of*).

1. *Vide* INDICTMENT, No. 5.

OVERSEERS.

1. *Vide* VILL, No. 1.
2. *Vide* VESTRY, No. 1.
3. An overseer proceeding through all the stages of an expensive suit without the concurrence of a vestry, is personally liable. *R. v. Inhabitants of Micklefield.* 507
4. An action will not lie against an overseer, till the money is in his hands. *ib.*
5. *Vide* VILL, No. 2.

P.

PALACES ROYAL.

1. The royal palaces are not rateable to the poor. *R. v. Matthews.* 2

PAROLE EVIDENCE.

1. *Vide* EXECUTION, No. 1.
2. Where a written instrument is not produced, what distance of time and other circumstances will justify the admission of parole evidence. *R. v. Inhabitants of North Bedburn.* Page 452

PASS WARRANT.

1. *Vide* APPEAL, No. 1.

PAYING RATE.

1. Paying without being rated, will not give a settlement. *R. v. Inhabitants of St. John, Southwark.* 62

PENALTY.

1. *Vide* ADJUDICATION, No. 2.

PLACES, *Extraparochial.*

1. *Vide* HIRING AND SERVICE, No. 6. VILL, No. 2.

PLACES, *Public.*

1. *Vide* HIRING AND SERVICE, No. 6.

POOR.

1. In an indictment for criminal misconduct towards the poor, a general description of them, without setting out their names, seems sufficient. *R. v. Wetherill and another.* 432

POOR, CASUAL.

1. A servant, whose limb is fractured by a fall when sitting on the shafts of his master's wagon, is a casual pauper in the parish in which he falls, and must be supported and cured at their expence, and not at that of his master. *Newby v. Wiltshire.* 527

POSITIVE.

1. *Vide* CONVICTION, No. 3.

POSSESSION.

1. *Vide* ARSON, No. 2.

PREAMBLE.

1. *Vide* CERTIFICATE, No. 4.

PREMISES.

1. *Vide* HABENDUM, No. 1.

PRESUMPTION.

1. *Vide* COURT INFERIOR, No. 1.

PRISON.

1. *Vide* RATEABILITY, No. 9.

PROFITS.

1. *Vide* RATEABILITY, No. 9.

PROPERTY, *Incorporeal.*

1. *Vide* TITHES, No. 2.

PROPERTY, *Personal.*

1. *Vide* RATE, No. 6. RATEABILITY, No. 1 & 3.

PROPORTION.

1. *Vide* RATE, No. 14.

PUBLICATION.

1. *Vide* APPEAL, No. 1.

PURCHASE.

1. The surrender of an old lease, which had been many years in the family, and the taking of a new one, is not a purchase within the meaning of statute 9 G.; and will not prevent a settlement being acquired by residence. *R. v. Inhabitants of Tarrant Launceston.* Page 209
2. A conveyance after marriage, of an estate under the value of 30*l.* by the wife's father to the husband only, but intended for the use of both

A TABLE OF THE PRINCIPAL MATTERS.

589

both husband and wife, and made in consideration as well of the marriage then had, as of natural love and affection to both, is not a purchase within *ft. 9 G.* but gives a settlement. *R. v. Inhabitants of Ashton Underhill*, and *R. v. Inhabitants of Charlton.* Page 416

PUTATIVE FATHER.

1. *Vide BASTARD*, No. 5 & 6.

Q.

QUALIFICATION.

1. *Vide GAME.*

QUARANTINE.

1. A cottager's widow, by residence during her quarantine, acquires a settlement, and communicates it to her children. *R. v. Inhabitants of Long Wittenham.* 474

QUASHING.

1. Court never quashes indictment for serious offences, but upon the clearest and plainest grounds. *R. v. Wetherill and another.* 432

R.

RATE.

1. *Vide NEXT OF KIN*, No. 1.
2. *Vide ARTIFICER*, No. 1.
3. *Vide JURISDICTION*, No. 2.
4. If the form of the rate shews that the parish have notice of the person rated, he need not be rated by name. *R. v. Inhabitants of Walsall.* 35
5. *Vide PAYING*, No. 1.
6. The name of the late tenant appearing upon the rate, and the occupation of the present tenant being known to the parish, the present tenant by paying gains a settlement. *R. v. Inhabitants of Heckmondwike.* 103
7. When the title of the rate is so much in the pound, and the pauper's name and yearly rent

are inserted in the rate, a settlement is gained, though no sum appears to be assessed. *R. v. Inhabitants of Carhampton.* Page 108

8. *Vide JURISDICTION*, No. 2.
9. *Vide LAND-TAX*, No. 2 & 3.
10. Who is rated is a question of fact. *R. v. Inhabitants of Endon, Longdon and Stanley.* 374
11. Under the construction of the land-tax act, where the title of the rate is upon *inhabitants*, this word seems to import *occupiers*. *R. v. Inhabitants of Mitcham.* 276
12. *Vide APPEAL*, No. 5.
13. *Vide APPEAL*, No. 8.
14. If the proportions, in which real and personal property is assessed, are *apparently unequal*, (*viz.* one half of the realty and one fortieth of the interest of the personalty at four *per cent.*) the Court will quash such poor rate. *R. v. Sillis & al. Inhabitants of Lakenham.* 522
15. *Vide WITNESS*, No. 1.

RATEABILITY.

1. Servants occupying separately house and land, whether they pay for them rent or services, are rateable. *R. v. Mathews.* 1
2. An uninterrupted usage under *ft. 43 Eliz.* of rating stock in trade within a parish to the poor, establishes that holders of this property are liable to be assessed for it in such parish. *R. v. James Rodd.* 147
3. Under the construction of the riot act, which speaks of *ability in general*, and does not specify, as the *stat. 43 Eliz.* does, any *particular taxable object*, or refer at all to that statute, all persons, having personal property within the district assessed, are inhabitants; and as such are rateable. *Atkins & al. v. Davis & al.* 315
4. A house with a carding engine in it, described in the rate as an *engine house*, and both let and occupied together, though it does not appear whether the engine is fixed to the building, is considered as an entire subject, and to the extent of their annual value are properly so rateable to the poor. *R. v. Hogg.* 266
5. An alms-house, wholly occupied by objects of a charity, or their attendants, and of which *no profit is made*, although the absolute property of it is in the person who gives the alms, has no legal occupiers, and is not an object of taxation under the poor laws. *R. v. Waldo Esq.* 358

4 G

6. A

6. A private building always used as a chapel, and by contract never to be used for any other purpose, is, if a profit is made of it, rateable to the poor. *Robson v. Hyde & al.* Page 310
7. Payments in lieu of tithes, settled under a compromise between a parson and a parish, and confirmed by act of parliament, are rateable to the poor. *Raun Clerk v. Pickin & al.* 197
8. Profits of a weighing machine house, are rateable to the poor. *R. v. Inhabitants of St. Nicholas, Gloucester.* 362
9. The warden of the Fleet is rateable to the poor, as occupier, for his profits upon the lodgings of the prisoners. *R. v. Eyles Esq.* 407
10. *Vide TITHES, No. 2.*

RECITAL.

1. *Vide INDICTMENT, No. 1.*

REFEREE.

1. Court will not interfere where a referee has determined. *R. v. Justices of Devonshire.* 32

RELIEF.

1. *Vide APPEAL, No. 3.*

REMOVAL.

1. *Vide WIFE, No. 1 & 2. CERTIFICATE, No. 1 & 7.*

RENTING 10 l. a Year.

1. *Vide CERTIFICATE, No. 6.*
2. *Vide TENANT AT WILL, No. 1.*
3. Renting a tenement of 10 l. a year in one parish does not, if the tenant removes with all his furniture and stock on his farm, from that parish into another, give him a capacity of acquiring, during such tenancy, a settlement in such other parish; but if he has been an inhabitant for forty days preceding such removal, in the parish in which his tenement lay, he is there settled. *R. v. Inhabitants of Topcroft.* 478

REPRESENTATIVE.

1. *Vide NEXT OF KIN, No. 1. APPRENTICE, No. 3.*

REPUTATION.

1. *Vide VILL, No. 2.*

RESERVATION of Wages.

1. *Vide WAGES, No. 3. GENERAL HIRING, No. 2.*

RESIDENCE

1. *Vide RENTING 10 l. a Year, No. 3.*

RETAINER, General.

1. *Vide GENERAL HIRING, No. 2.*

RETROSPECT.

1. *Vide HIRING, No. 4.*

RETURN.

1. *Vide CERTIORARI, No. 2.*

REVENUE.

1. *Vide CONVERTIBILITY, No. 1.*

RIOT ACT.

1. *Vide RATEABILITY, No. 3.*

ROADS.

1. *Vide JURISDICTION, No. 5.*

ROGUES, Incurrible.

1. Justices out of Sessions have no jurisdiction, in the case of incorrigible rogues. *R. v. Edwards and another.* Page 513

A TABLE OF THE PRINCIPAL MATTERS.

591

S.

SALARY.

1. *Vide* VESTRY, No. 1.

SERVANT.

1. *Vide* APPRENTICE, No. 1. RATE, No. 5. SLAVE, No. 1.
2. *Vide* CASUAL POOR, No. 1.
3. *Vide* DISCHARGE, No. 5.
4. Servant, father of a bastard child, may be discharged by his master. *R. v. Inhabitants of Welford.* Page 57

SERVICE.

1. Servant sleeping with his wife, without his master's knowledge, out of the parish, in which his master lives, gains a settlement there. *R. v. Inhabitants of Hedfor, 51. R. v. Inhabitants of Nympsfield.* 107
2. Under a hiring for not less than a year, if there be no other discontinuance of the service than such as the law compels, whatever may have been further stipulated between the parties, a settlement is gained. *R. v. Inhabitants of Wincombe.* 94
3. Services in successive years, without a new agreement, will connect only when the servant at the commencement of the succeeding year is unmarried. *R. v. Inhabitants of St. Giles's, Reading.* 54
4. *Vide* HIRING AND SERVICE, No. 5.
5. After forty days service under a hiring for a year, a servant, who by an accident when in liquor is disabled from further service, gains a settlement. *R. v. Inhabitants of Sharrington.* 471

SERVICE *ejusdem generis.*

1. *Vide* HIRING AND SERVICE, No. 7.

SERVICE, *General.*

1. *Vide* APPRENTICE, No. 8.

SERVICE, *Particular.*

1. *Vide* APPRENTICE, No. 8.

SERVICE, *Voluntary.*

1. *Vide* HIRING, No. 7.

SESSIONS.

1. *Vide* APPEAL, No. 3 & 4. JURISDICTION, No. 2. INCORRIGIBLE ROGUES, No. 1.

SETTLEMENT.

1. Increase of wages upon a second hiring, for less than a year, on the day the first hiring for a year ended, and a removal into another parish, are not such a discontinuance of the first service as will defeat a settlement under it. *R. v. Inhabitants of Underbarrow and Bradleyfield. P. 65*
2. Settlements are in recompence of the benefit of the pauper's labour. *R. v. Inhabitants of St. Giles's, Reading.* 54

SETTLEMENT, *Derivative.*

1. *Vide* QUARANTINE, No. 1.

SETTLEMENT, *New.*

1. *Vide* CERTIFICATE, No. 3.

SICKNESS.

1. *Vide* CASUAL POOR, No. 1.

SIGNATURE OF JUSTICES.

1. At the time of the execution of an indenture of apprenticeship by the master, it seems, that the indenture ought to have the signature and allowance of two justices. *R. v. Saltren Esq.* 444

SLAVE.

1. A slave, brought into this country and continuing to live with her master, and afterwards with his

- his widow several years, is not such a hired servant, as may, under the poor laws, intitle herself to a settlement. *R. v. Inhabitants of Thames Ditton.* Page 516

SMUGGLING.

- Vide FELONY, No. 4.*

STATUTE (*Words of*).

- Vide CONVICTION, No. 4.*

STOCK IN TRADE.

- Vide RATE, No. 6.*

SURPLUSAGE.

- Vide ADJUDICATION, No. 2.*

T.

TAKING *10 l. a Year.*

- Vide TENEMENT, No. 3.*

TENANCY AT WILL.

- Vide TENEMENT, No. 3.*

TENANT.

- Vide NEXT OF KIN, No. 1. JURISDICTION, No. 3.*

TENANT AT WILL.

- Tenant at will after assigning his whole interest, and the assignee accepted as tenant, if rent is sometimes paid by the one and sometimes by the other, and one sometimes in possession and sometimes the other, and the lessor, years after the assignment, takes a bond from the original tenant as a security for the rent of the premises, such tenant at will may acquire a settlement. *R. v. Inhabitants of Magbull.* 429

TENEMENT.

- Vide CERTIFICATE, No. 6.*
- Vide LAND-SALE COLLIERY,*
- "I give you a close to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it," creates a tenancy at will; and, if this with other tenements amounts to 10 l. a year, they constitute a sufficient taking of a tenement to enable the occupier to gain a settlement under 13 & 14 Car. 2. c. 12. *R. v. Inhabitants of Fillongley.* Page 569

TERMS, *Provincial.*

- Vide LAND-SALE COLLIERY, No. 1.*

TERMS, *Technical.*

- Vide LAND-SALE COLLIERY, No. 1.*

TITHES.

- Vide RATEABILITY, No. 5.*
- Incorporeal property (as tithes) makes the holder liable to take a parish apprentice. *R. v. Saltren Esq.* 444

U.

USAGE.

- Vide RATEABILITY, No. 2.*
- Local usages do not controul or affect the construction of acts of parliament. *R. v. Hogg.* 266
- The usage of a particular district cannot vary the general law. *R. v. Saltren Esq.* 444

USES (*Declaration of*).

- Vide HABENDUM, No. 1.*

V.

VAGRANT.

- Vide APPEAL, No. 1. INCORRIGIBLE ROGUES, No. 1.*

VESTRY.

1. Vestry have no power to appoint a deputy overseer with a salary. *R. v. Welch & al. P. 594*
2. *Vide* OVERSEER, No. 3.

VILL.

1. To obtain a mandamus to justices to appoint overseers, it must be expressly sworn, that the place in question either is, or is reputed to be a vill. *R. v. Justices of Bedfordshire, 167.*
R. v. Justices of Peterborough. 238
2. Where it is doubtful whether a place is *legally and actually* a vill, it is enough to justify an appointment of overseers for such place, that the Sessions return it so by reputation. *R. v. Inhabitants of Eysford. 542*

VOIDABLE.

1. *Vide* INDENTURE, No. 4.

W.

WAGES.

1. *Vide* HIRING AND SERVICE, No. 3.
2. *Vide* ABATEMENT, No. 1.
3. A weekly reservation of wages does not of itself determine, whether a contract is weekly or annual; but this must be collected from the circumstances attending the contract. *R. v. Inhabitants of Seaton and Beer. 440*

WIDOW.

1. *Vide* QUARANTINE, No. 1.

WIFE.

1. On removal of a *wife*, it is enough in the first instance, to prove her maiden settlement. *R. v. Inhabitants of Ryton, Page 39.* So of *widow. R. v. Inhabitants of Woodsford. 236*
2. Removal of a woman, as a wife, imports that it is to her husband's settlement. *R. v. Inhabitants of Hinxworth. 42*
3. In the first instance, it is enough to shew a woman's settlement before marriage: and, if it were not, to know only that her husband was born in Yorkshire, is information of a nature too loose and general, to make an inquiry after him there necessary. *R. v. Inhabitants of Hensingham. 206*
4. The removal of a woman to the place of her settlement, if in point of fact she is a wife, though such addition is not given to her in the order of removal, is conclusive upon the settlement of the husband. *R. v. Inhabitants of Towcester. 497*
5. *Vide* PURCHASE, No. 2. DECLARATIONS, No. 1.

WITNESS.

1. It is no objection to the testimony of an inhabitant of a parish, who is liable to be rated, but not rated in fact, that he has an interest in penalties to be recovered by his testimony. *R. v. Cottrell. 551*

WORKHOUSE.

1. *Vide* BASTARD, No. 4. EMANCIPATION, No. 3.

THE END.



ERRATA.

- Page 389. l. 11. *for* "game. The" *read* "game, the"
392. l. 4. *for* "to convict and" *read* "upon complaint made to him upon oath &c. to issue his warrant to bring such person so complained of before him, and, if the person so complained of, be convicted before him or any other justice &c. by the oath of one or more credible witnesses &c."
395. l. 22. *for* "or inclosed or" *read* "but alleging it to be other inclosed ground and"
426. in marginal note, *for* "Findern" *read* "Melbourn"
443. Note [b], l. 4. *after* "post" *add* "p. 489, Thames Ditton post, 516. St. Mary, Guildford, post 521."
- Ibid.* At the end of the note *add*—"This case is reported in 5 Durnf. and East 447. And see to this point, in the case of an apprentice, the K. v. the Inhabitants of St. Michael's Bath. Burr. Settl. Cas. 731. Const. 618."
453. l. 2 & 3. *for* "Smith" *read* "Snaith"
468. At the end of the note [a] *for* "1776" *read* "150."
480. Note [a], l. 19. *for* "E. 1787" *read* "M. 1786"
-



11-18-21

